



City of
Los Banos
At the Crossroads of California

www.losbanos.org

AGENDA

CITY COUNCIL MEETING

CITY HALL COUNCIL CHAMBERS
520 J Street
Los Banos, California

AUGUST 19, 2020 – 3:00 PM

**Temporary Public Comment Email Established for the City of Los Banos
City Council Meeting of August 19, 2020 – emails must be received by 3:00 PM:**

The City has established a temporary email address citizens can use to email public comments on any agenda item, limited to 250 words or less. Any public comments received by August 19, 2020 prior to 3:00 PM will be read aloud during the appropriate time and agenda item.

The email address is cityclerk@losbanos.org

Public comment during Public Hearings will be taken in real time via email.

Once the Public Hearing is opened, the City Council will pause the meeting in order to receive emails directed at the Public Hearing (up to 250 words) and will read comments into the record after resuming the meeting, as time permits.

Please indicate that comments are for a particular Public Hearing by putting “Public Hearing” in the subject line of the email and the title of the Public Hearing.

The Council Chambers are closed to the public, those interested in viewing the City Council meeting can do so on the City of Los Banos’ Website at:

<https://www.youtube.com/watch?v=sc3NQ8A8iuE&feature=youtu.be>

If you require special assistance to attend or participate in this meeting, please call the City Clerk’s Office @ (209) 827-7000 at least 48 hours prior to the meeting.

The City of Los Banos complies with the Americans with Disabilities Act (ADA) of 1990.

* * * * *

Si requiere asistencia especial para atender o participar en esta junta por favor llame a la oficina de la Secretaria de la ciudad al (209) 827-7000 a lo menos de 48 horas previas de la junta.

La Ciudad de Los Banos cumple con la Acta de Americanos con Deshabilidad (ADA) de 1990.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the meeting and in the City Clerk’s office located at City Hall, 520 J Street, Los Banos, California during normal business hours. In addition, such writings and documents may be posted on the City’s website at www.losbanos.org.

* * * * *

Cualquier escritura o los documentos proporcionaron a una mayoría del Ayuntamiento respecto a cualquier artículo en este orden del día será hecho disponible para la inspección pública en la reunión y en la oficina de la Secretaria de la ciudad en City Hall, 520 J Street, Los Banos, California durante horas de oficina normales. Además, tales escrituras y los documentos pueden ser anunciados en el website de la ciudad en www.losbanos.org.

1. CLOSED SESSION. **3:00 PM**
(Members of the public may address the City Council Members on the following closed session items. Speakers may submit their comments by submitting a written statement, limited to 250 words or less, by dropping it off in the Utility Payment Box at City Hall, 520 J Street, by mail or emailing cityclerk@losbanos.org. Comments received will be read into the record during the City Council Meeting.)

A. Conference with Labor Negotiators, Pursuant to Government Code Section 54957.6, Agency Designated Representatives: City Manager Terrazas, City Attorney Vaughn, City Clerk/Human Resources Director Mallonee, Finance Director Williams, Legal Counsel Tuffo; Employee Organizations: Los Banos Police Officers Association (LBPOA), Los Banos Police Sergeants Association (LBPSA), Los Banos Fire Fighters Association (LBFFA), Los Banos Police Dispatchers/Community Services Officers Association (LBPDCSOA), Los Banos Public Employees Union (Public Works) Local 1/AFSCME and Unrepresented Miscellaneous Employees.

2. CALL TO ORDER. **4:00 PM**

3. PLEDGE OF ALLEGIANCE.

4. ROLL CALL: (City Council Members)

Faria ____, Johnson-Santos ____, Jones ____, Lewis ____, Villalta ____

5. CONSIDERATION OF APPROVAL OF AGENDA.

6. PUBLIC FORUM. (Members of the public may address the City Council Members on any item of public interest that is within the jurisdiction of the City Council; includes agenda and non-agenda items. No action will be taken on non-agenda items. Speakers may submit their comments by submitting a written statement, limited to 250 words or less, by dropping it off in the Utility Payment Box at City Hall, 520 J Street, by mail or emailing cityclerk@losbanos.org. Comments received will be read into the record during the City Council Meeting.)

7. CONSIDERATION OF APPROVAL OF CONSENT AGENDA. (Items on the Consent Agenda are considered to be routine and will be voted on in one motion unless removed from the Consent Agenda by a City Council Member.)

- A. Check Register for #223246 – #223417 in the Amount of \$432,379.27.

Recommendation: Approve the check register as submitted.

- B. Minutes for the August 5, 2020 City Council Meeting.

Recommendation: Approve the minutes as submitted.

- C. City Council Resolution No. 6252 – Approving and Adopting Final Tract Map No. 2017-01 Stonecreek at Los Banos The Villages VII Phase 2B Unit 3 and Accompanying Subdivision Improvement Agreement (Anderson Homes).

Recommendation: Adopt the resolution as submitted.

- D. City Council Resolution No. 6253 – Adopting a Revised Budget for the 2020-2021 Fiscal Year as it Pertains to Needed Modifications to the New Fire Apparatus and Increasing Expenditures in the Fire Department Capital Improvement Fund in the Amount of \$25,000.

Recommendation: Adopt the resolution as submitted.

- E. City Council Resolution No. 6254 – Adopting a Revised Budget for the 2020-2021 Fiscal Year as it Pertains to Purchasing All Needed Miscellaneous Equipment for the New Fire Apparatus and Increasing Expenditures in the Fire Department Capital Improvement Fund in the Amount of \$80,000.

Recommendation: Adopt the resolution as submitted.

- F. City Council Resolution No. 6255 – Approving an Amendment to Division 5 – Personnel Benefits of the City’s Policy & Procedures Manual as it Pertains to the City’s Contribution toward Monthly Health Premiums for Unrepresented Employees for the Calendar Year 2021.

Recommendation: Adopt the resolution as submitted.

- G. City Council Resolution No. 6256 – Approving the Acceptance of Federal Grant Funding from the Assistance to Fire Fighter Grant Program - COVID-19 Supplement (AFG-S) and Amending 2020-2021 Fiscal Year Budget as it Pertains to Revenues and Expenditures in the Amount of \$9,555.93.

Recommendation: Adopt the resolution as submitted.

8. PRESENTATION – Proclamation Recognizing National Health Center Week.

Recommendation: Informational item only, no action to be taken.

9. PUBLIC HEARING. (If you challenge the proposed action as described herein in court, you may be limited to raising only those issues you or someone else raised at the public hearing described herein or in written correspondence delivered to the City at, or prior to, the public hearing.)

- A. Public Hearing – To Receive Public Comment and Discussion of the Submittal of an Application in Response to the Release of State Administered Community Development Block Grant (CDBG) CV Funds for COVID-19 Related Activities that Benefit Low and Moderate Income Residents.

- 1) City Council Resolution No. 6257 – Approving an Application for Funding and Execution of a Grant Agreement and Any Amendments thereto from

the 2020 Community Development Block Grant Program-Coronavirus Response Round 1 (CDBG-CV1) NOFA Dated June 5, 2020.

Recommendation: Receive staff report, open the public hearing, receive public comment, close the public hearing and adopt the resolution as submitted.

10. CONSIDERATION OF APPROVAL OF CITY COUNCIL RESOLUTION NO. 6258 – ACCEPTING CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT FUNDS IN THE AMOUNT OF \$517,629 AND ADOPTING THE CARES ACT FUNDING PLAN, COVID-19 SMALL BUSINESS ASSISTANCE PROGRAM GUIDELINES AND THE RESIDENTIAL HARDSHIP ASSISTANCE PROGRAM GUIDELINES.

Recommendation: Receive staff report and adopt the resolution as submitted.

11. CONSIDERATION OF APPROVAL OF CITY COUNCIL RESOLUTION NO. 6259 –DIRECTING CITY OF LOS BANOS STAFF TO BEGIN NEGOTIATIONS WITH MID VALLEY DISPOSAL TO FINALIZE FRANCHISE AGREEMENT FOR THE RESIDENTIAL AND COMMERCIAL GARBAGE, RECYCLABLE MATERIAL AND ORGANIC WASTE COLLECTION SERVICES CONTRACTOR.

Recommendation: Receive staff report and adopt the resolution as submitted.

12. CONSIDERATION OF APPROVAL OF CITY COUNCIL RESOLUTION NO. 6260 – REQUESTING THAT THE MERCED COUNTY REGIONAL WASTE AUTHORITY (RWA) DO THE FOLLOWING: 1. PERFORM A STUDY THAT RESEARCHES AND REVIEWS THE EXISTING LANDFILL TIPPING FEES AT THEIR TWO LANDFILLS, AND 2. ESTABLISHES AND FOLLOWS A WASTE STREAM DIRECTION POLICY OF SOLID WASTE, RECYCLING AND PLANT MATERIAL THAT IS EQUITABLE AND CONSISTENT FOR ALL THE RWA JURISDICTIONS.

Recommendation: Receive staff report and adopt the resolution as submitted.

13. LOS BANOS DOWNTOWN UPDATE.

Recommendation: Receive staff report and provide direction on how to proceed.

14. CANCELLATION OF THE REGULAR CITY COUNCIL MEETING SCHEDULED FOR WEDNESDAY, SEPTEMBER 2, 2020 DUE TO SUMMER BREAK.

Recommendation: Cancel the meeting as stated.

15. COVID-19 STATUS UPDATE.

- A. City Council Resolution No. 6261 – Continuing the Declaration of the Existence of a Local Emergency within the City of Los Banos (COVID-19).

Recommendation: Receive staff report and adopt the resolution.

16. ADVISEMENT OF PUBLIC NOTICES. (Two reports)

17. CITY MANAGER REPORT.
18. REPORT/UPDATE ON MERCED COUNTY ASSOCIATION OF GOVERNMENTS (MCAG) AND MEASURE V COMMITTEE.
Recommendation: Informational item only, no action to be taken.
19. CITY COUNCIL MEMBER REPORTS.
 - A. Daronica Johnson-Santos
 - B. Brett Jones
 - C. Deborah Lewis
 - D. Tom Faria
 - E. Mayor Mike Villalta
20. ADJOURNMENT.

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing agenda was posted on the City Hall bulletin board not less than 72 hours prior to the meeting.


Sara Blevins, Deputy City Clerk

Dated this 13th day of August 2020



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor Villalta & City Council Members

FROM: Mark Fachin, P.E., Public Works Director/City Engineer

DATE: August 19, 2020

TYPE OF REPORT: Agenda Item

SUBJECT: Approval to begin negotiations with Mid Valley Disposal for Residential and Commercial Garbage, Recyclable Material, and Organic Waste Collection Services

Recommendation:

Staff recommends that the City enter into negotiations with Mid Valley Disposal to finalize the new franchise agreement for the Residential and Commercial Garbage, Recyclable Material, and Organics Waste Collection Services Contractor. Staff anticipates returning to City Council on October 7, 2020 to request approval of the final negotiated franchise agreement.

Background:

The current Solid Waste Collection Agreement between the City of Los Banos (City) and Republic Services (Republic) will terminate on June 30, 2021. The City contracted with R3 Consulting Group, Inc. (R3) to assist the City in conducting a competitive Request for Proposals Process (RFP) and develop a new Franchise Agreement that is compliant with all of the current state regulations.

A key issue facing the City is how to comply with the state mandates and CalRecycle regulations governing management of recyclable materials and organic waste. SB 1383 mandates that all customers must actively participate in organic waste diversion program to substantially reduce organic waste being landfilled. AB 341 mandates that all commercial customers participate in a recyclables diversion program. CalRecycle has strongly indicated that non-participation in organics waste or recyclable materials diversion programs may result in fines to the City and/or its residents and businesses.

The purpose of this agenda item is to seek Council direction regarding Solid Waste Collection Services and authorization to proceed with contract negotiations.

Currently, the City is implementing an AB 1826 plan, which was developed with CalRecycle as an action plan to comply with regulatory requirements. The new organic recycling program, included in the new franchise agreement, is a key aspect of meeting state regulatory compliance.

Discussion:

The City released an RFP for Collection Services on April 1, 2020. On March 27, the following six companies submitted proposals:

1. Caglia Environmental
2. Gilton Solid Waste Management, Inc.
3. GreenWaste Recovery, Inc.
4. Mid Valley Disposal (MVD)
5. Republic Services
6. Waste Management

After a Pass-Fail evaluation was conducted of the six proposals, Gilton was determined to be non-responsive to the City's RFP. An Evaluation Team made up of four City Staff, and two R3 staff evaluated the remaining five proposals. From March 30 to July 13, 2020 the Evaluation Team reviewed and scored each proposal following the criteria included in the RFP. The collective score of the five proposals is as follows:

Proposer	Collective Score
1. Caglia Environmental	1,305
2. GreenWaste Recovery, Inc.	1,271
3. Mid Valley Disposal	1,459
4. Republic Services	1,306
5. Waste Management	1,338

The City chose to interview the top two companies, as well as the incumbent company, Republic Services. The following three companies were invited to interviews:

1. Mid Valley Disposal
2. Waste Management
3. Republic Service

A common interview agenda and time allowance was provided to each of the three companies, and interviews were conducted via Zoom video conference on July 16 and 17, 2020.

Based on evaluation and scoring of each proposal, and augmented with the 90-minute interviews, the Evaluation Team ranked Mid Valley Disposal as the top-ranked company.

Mid Valley Disposal is a Central Valley based solid waste company with modern state-of-the-art recyclables and organics processing facilities located in Fresno and Kerman, respectively. They provide franchised services to 27 communities and have done service provider transitions for 10 communities in the Central Valley. Mid Valley Disposal operates its collection operations using on-board tablets and multiple cameras to track and record collection stops, on-route conditions, driver performance, or vehicle breakdowns/hydraulic spills. Information generated from collection vehicles, in real time, is directly linked to dedicated customer service representatives. Customer service representatives also have electronic access to the customer's service information in the event service problems or discrepancies occur, and the customer needs to be notified. This modern, integrated, and data driven approach is what Mid Valley Disposal has proposed to provide the City.

Mid Valley Disposal is committed to opening a fully staffed customer service, vehicle parking, and maintenance facility within the City and will provide two full-time community outreach staff to work with customers in participating in the required recycling and organic waste diversion programs. If a new hauler is selected by the City, the RFP requires that the new hauler must offer employment to all displaced workers from the incumbent hauler.

With their detailed proposal and during their interview, Mid Valley Disposal demonstrated that they will take full responsibility for meeting all performance requirements in the franchise agreement and will move toward and keep the City in compliance with CalRecycle regulations. Mid Valley Disposal demonstrated that they have the staffing, management tools, technology, financial ability, and local knowledge to provide a high level of customer service and good value to the City's residents and businesses.

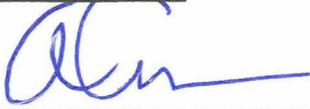
Additionally, Mid Valley has existing capacity to process the City's organic waste and recyclable materials if the Merced County Regional Waste Authority (MCRWA) is unable to process organics (mixed food and green waste) or recyclables.

The City's consultant, R3 Consulting, will be presenting a power point that will go over the RFP process and detail specific items included in the Mid Valley proposal. After the presentation, staff and R3 Consulting will receive any City Council input as to items they would like to additionally see in the agreement.

Fiscal Impact:

At this time there is no financial impact to the City. The City will continue to receive revenue collected from the service rates as is current practice. The cost of the RFP will be paid for by the selected contractor.

Reviewed by:



Alex Terrazas, City Manager


Sonya Williams, Finance Director

Attachments:

Resolution

Request for Proposals for Residential and Commercial Garbage, Recyclable Material
and Organic Waste Collection Service

Power Point Presentation

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS DIRECTING CITY OF LOS BANOS STAFF TO BEGIN NEGOTIATIONS WITH MID VALLEY DISPOSAL TO FINALIZE FRANCHISE AGREEMENT FOR THE RESIDENTIAL AND COMMERCIAL GARBAGE, RECYCLABLE MATERIAL AND ORGANIC WASTE COLLECTION SERVICES CONTRACTOR

WHEREAS, the current Solid Waste Collection Agreement between the City of Los Banos and the current contractor will terminate on June 30, 2021; and

WHEREAS, the City of Los Banos released a Request for Proposals (RFP) for Residential and Commercial Garbage, Recyclable Materials and Organic Waste Collection Services on April 1, 2020; and

WHEREAS, the City of Los Banos received proposals from six companies of which 5 were considered responsive to the RFP; and

WHEREAS, the City of Los Banos RFP Evaluation Team reviewed and scored the five responsive RFP proposals and scored each proposal following the criteria included in the RFP; and

WHEREAS, the three top companies were invited to interviews that took place on July 16, 2020 and July 17, 2020; and

WHEREAS, the City of Los Banos Interview Panel unanimously ranked Mid Valley Disposal as the top-ranked company.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Los Banos directs City of Los Banos staff to begin negotiations with Mid Valley Disposal to finalize franchise agreement for the Residential and Commercial Garbage, Recyclable Material and Organic Waste Collection Services Contractor.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on the 19th day of August 2020, by Council Member _____ who moved its adoption, which motion was duly seconded by Council Member _____ and the Resolution adopted by the following vote:

AYES:
NOES:
ABSENT:

APPROVED:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk



City of
Los Banos
At the Crossroads of California

Request for Proposals (RFP)
for
Residential and Commercial Garbage, Recyclable Material
And Organic Waste Collection Services

Proposal must be received
no later than 4:00 P.M. PT
May 20, 2020

**Questions with regards to submission, process, or proposal
can be emailed to:**

William Via, MPA
Public Works Operations Manager
william.via@losbanos.org

City of Los Banos
Publics Works Department
411 Madison Avenue
Los Banos, CA 93635
209-827-7056
www.losbanos.org

Date of Issue: April 1, 2020

Mandatory Pre-Proposal Video Conference: April 13, 2020 at 2:00 p.m. PT

Deadline for Questions: April 22, 2020 at 4:00 p.m. PT

Proposal Submission Deadline: May 20, 2020 by 4:00 p.m. PT

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City of Los Banos Request for Proposals for Residential and Commercial Garbage, Recyclable
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City of Los Banos Request for Proposals for Residential and Commercial Garbage, Recyclable
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Attachment A – Draft Franchise Agreement

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Notice

Request for Proposals For Residential and Commercial Garbage, Recyclable Material, and Organic Waste Collection Services

NOTICE IS HEREBY GIVEN that the City of Los Banos is seeking proposals from qualified Contractors for Residential and Commercial Garbage, Recyclable Materials, and Organic Waste Collection Services.

Submit five (5) hard copies and one (1) reproducible scope of the proposal in a sealed package clearly marked "Proposal for Residential and Commercial Garbage, Recyclable Material, and Organic Waste Collection Services". Submittals must be received no later than 4:00 p.m. PT, Wednesday, May 20, 2020 and addressed as follows:

City of Los Banos
Attention: Lucille L. Mallonee
The City of Los Banos City Clerk
520 J Street
Los Banos, CA 93635

No late submittals will be accepted. The City may conduct interviews of top ranking Contractors in order to make a final selection. The successful firm will be recommended to the City Council for authorization to enter into a Professional Services Agreement for Residential and Commercial Garbage, Recyclable Materials, and Organic Waste Collection Services with the City of Los Banos. Any questions with regard to submissions, process, or proposals can be emailed to William Via, MPA, Public Works Operations Manager at William.via@losbanos.org. The Request for Proposal can be viewed and/or obtained from the City of Los Banos website at <http://www.losbanos.org/category/rfps-and-rfqs/>.

Failure to comply with the requirements set forth in this Request for Proposal may result in disqualification. Proposals and/or modifications received subsequent to the hour and date specified above will not be considered. Submitted proposal may be withdrawn at any time prior to the submission time specified in this Request for Proposal, provided notification is received in writing before the submittal deadline. Proposals cannot be changed or withdrawn after the submittal deadline. No handwritten notations or correction will be allowed. The responding Contractor is solely responsible for all costs related to the preparation of the proposal.

The City of Los Banos reserves the right to reject all proposals and waive any minor informalities or irregularities contained in this proposal. Acceptance of any proposal submitted pursuant to this Request for Proposal shall not constitute any implied intent to enter into a contract.

The contract award, if any, will be made to the Contractor who, in the City's sole discretion, is best able to perform the required services in a manner most beneficial to the City.

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1 INTRODUCTION TO RFP DOCUMENTS

1.1 RFP Release

This Request for Proposals (RFP) is being issued by the City of Los Banos (City). The City is soliciting proposals from entities (Proposer(s)) with demonstrated experience and qualifications in providing Garbage, Recyclable Material and Organic Waste Collection Services (Collection Services) such as those required in this RFP.

Sealed proposals for the provision of Collection Services will be accepted by the City of Los Banos, City Clerk, 520 J Street Los Banos, CA, 93635 no later than 4:00 p.m. PT on May 20, 2020.

With respect to the COVID-19 outbreak, an on-site Pre-Proposal Meeting is not possible. The Mandatory Pre-Proposal Meeting will be conducted via Zoom, a free video conference application. The Proposer must complete and submit Form A, located in Section 7 of this RFP, **three (3) days prior** to the Mandatory Pre-Proposal Video Conference. Once the Proposer submits Form A of this RFP package, the City will send out a pre-proposal video conference invitation code to the Proposer.

The specific service requirements of the City's requested services are contained within the definitions and body of the Draft Franchise Agreement, which will be provided at the MANDATORY Pre-Proposal Video Conference on April 13, 2020, and also made available via an addendum to this RFP at that time. Prospective Proposers are encouraged to examine the Draft Franchise Agreement in its entirety to ensure an understanding of the services being requested herein.

In accordance with the Americans with Disabilities Act, persons needing assistance to participate in this proceeding should contact the City Clerk's Office at (209) 827-2412 least 48 hours prior to any meetings.

Proposers should be aware that the City's intent is for residential and commercial Collection Services to begin on July 1, 2021. Proposers are encouraged to carefully review the instructions for the Rate Proposal Forms in Section 7 of this RFP document before completing the Rate Proposal Forms.

The RFP will be available beginning April 1, 2020 on the City's website , at the following URL: <http://www.losbanos.org/category/rfps-and-rfqf/>. All proposal documents related to this solicitation will be posted by the City on the City's website as indicated above. In the event the RFP document is obtained through any means other than the City's website, the City will not be responsible for the completeness, accuracy or timeliness of the RFP document. It is the Proposer's responsibility to ensure that the most complete and current version of the RFP document has been downloaded or otherwise obtained, including any addenda.

Before submitting a response, each Proposer shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the Franchise Agreement and to verify any representations made by the City. If the Proposer receives an award as a result of its proposal submission, failure to have made such investigations and examinations will in no way relieve the firm from its obligation to comply in every detail with all provisions and requirements of Franchise Agreement, nor will ignorance of such conditions and requirements be accepted as a basis or justification for any claim whatsoever by the firm for additional compensation.

Proposers are also required to review the documents listed below. These additional documents can be found on the City of Los Banos website at the following URL: <http://www.losbanos.org/category/rfps-and-rfqf/>.

City of Los Banos Request for Proposals for Residential and Commercial Garbage, Recyclable Material and Organic Waste Collection Services

- The current Franchise Agreement between the City of Los Banos and Republic Services for Collection and Transportation of Solid Waste, Recyclable Materials, and Green Waste.
- Current customer rate sheet.

Any questions with regard to submissions, process, or proposals can be emailed to William Via, MPA, Public Work's Operations Manager at william.via@losbanos.org.

All questions must be submitted in writing and in accordance with the schedule put forth in Section 1.3 of this RFP.

An RFP response must be accompanied by a Proposal Bond in the amount of **Fifty Thousand Dollars (\$50,000)** securing the Proposer's obligation to negotiate in good faith and execute a franchise agreement with the City of Los Banos. Additional information on payments to City may be found in Section 3.14 of this RFP.

The City's intent is to provide Collection Services in the most effective and economical manner and therefore it will make the provider selection based on which Proposer best fulfills the requirements and provides the best value to the City and its residents and businesses. The City reserves the right to reject any and all responses to this RFP without any cause whatsoever.

1.2 Mandatory Pre-Proposal Video Conference

A **MANDATORY** pre-proposal videoconference is scheduled to be held on April 13, 2020 beginning at 2:00 p.m. PT via the video conference application, Zoom, hosted by the City. The Proposer must complete and submit Form A, located in Section 7 of this RFP, **three (3) days prior** to the Mandatory Pre-Proposal Video Conference. An invitation code for this MANDATORY pre-proposal video conference will be sent to the Proposer after the Proposer has submitted Form A of this RFP to the City.

Attendance by a representative of each Proposer at the MANDATORY pre-proposal video conference is a requirement in order to be responsive to this RFP. No proposals will be accepted from Proposers that do not attend the MANDATORY pre-proposal video conference.

1.3 Procurement Schedule

The City plans to adhere to the following procurement schedule to the extent possible. Changes to the procurement schedule shall be at the sole option of the City. Table 1 on the following page provides the major milestones of this RFP process.

City of Los Banos Request for Proposals for Residential and Commercial Garbage, Recyclable Material and Organic Waste Collection Services

TABLE 1 PROCUREMENT SCHEDULE	
Activity	Date
RFP Released	April 1, 2020
Mandatory Pre-Proposal Video Conference	April 13, 2020 at 2:00 p.m. PT
Last Day to Submit Questions	April 22, 2020 by 4:00 p.m. PT
Proposals Due	May 20, 2020 by 4:00 p.m. PT
Interview Qualified Proposers	Week of June 8, 2020
Submit Staff Report to City	July 15, 2020
Present Evaluations Results to City Council	July 29, 2020 (tentative)
Finalize New Agreement for City Council Approval	September 2, 2020 (post negotiations with Top Proposer)
City Council Award of Agreement	September 16, 2020
Hauler Transition	September 17, 2020 through June 30, 2021
Start Collection Services	July 1, 2021

1.4 Procurement Goals/Summary of Intent

The goals of this procurement process are to:

- Ensure compliance with solid waste legislation including AB 939, AB 341, AB 1826, AB 1594, SB 1016, SB 1669, and SB 1383;
- Ensure compliance with other State laws that have been adopted since December 2007, when the prior franchise agreement was last amended and restated;
- Enhance food waste collection in compliance with AB 1826 and SB 1383;
- Anticipate and flexibly accommodate future statutory changes;
- Maintain a high level of customer service for the least possible and reasonable cost;
- Ensure an opportunity for stakeholder input regarding new or additional solid waste services desired from the collection provider, including residential and commercial customers (Service Recipients);
- Minimize service disruption through a smooth transition period, if a franchise agreement is negotiated with a new provider;
- Utilize new technologies and/or methodologies to reduce the City's contribution to greenhouse gas emissions/climate change; and
- Retain all other provisions of the franchise agreement.

The City's intent with the services provided as part of this RFP is to continue to provide the community with the appropriate level of service, at the highest quality, and at the best price. The specifications

City of Los Banos Request for Proposals for Residential and Commercial Garbage, Recyclable Material and Organic Waste Collection Services

contained within this RFP are designed to establish an effective, efficient, environmentally clean, uniform, and safe system of collection.

To this end, the City has tried to provide as much information as possible to all prospective Proposers in this RFP to allow them to properly prepare their responses and compute fair and reasonable compensation and rate quotes. However, it is the sole responsibility of the Proposer to calculate the rates quoted in the applicable set of Rate Proposal Forms provided in Section 7 of this RFP document.

1.5 Summary of Requested Services

The City has proposed the following services to be provided by Contractor:

Single Family Dwelling (SFD) Services

- Weekly collection of Garbage, with 32-, 64- and 96-Gallon carts;
- Weekly collection of Recyclable Materials;
- Weekly collection of Organic Waste (Food Waste collection to begin no later than January 1, 2022);
- Household Hazardous Waste (HHW) Drop-Off Locations within the City limits;
- Curbside Holiday Tree collection from December 26 through the second Friday in January; and
- On-Call Bulky Item Collection Service of three (3) cubic yards per collection, four (4) pick-ups per year.

Multi Family Dwelling (MFD) Services

- A minimum of weekly collection of Garbage;
- A minimum of weekly collection of Recyclable Materials;
- A minimum of weekly collection of Organic Waste (Yard Waste and Food Waste);
- HHW Drop-Off Locations within the City limits;
- Curbside Holiday Tree collection between December 26 and the third Friday in January; and
- On-Call Bulky Item Collection Service of one-half (0.5) cubic yards per individual MFD unit per collection, four (4) pick-ups per complex per year.

Commercial Services

- A minimum of weekly collection of Garbage;
- A minimum of weekly collection of Recyclable Materials; and
- A minimum of weekly collection of Organic Waste (Yard Waste and Food Waste).

Additional Services

- Collection of Garbage, Recyclable Materials, and Organics Waste from City facilities and City-Supported Events;
- Non-City Large Venue and Event Collection Services;

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- Annual HHW Drop-off event advertised for all residential customers;
- Clean-Up Day collection events four (4) times annually for all residential customers;
- Paper Shredding Events four (4) times annually for all residential customers;
- Mulch or Compost Delivery;
- Edible Food Recovery Support;
- Education and Outreach Program;
- Local Customer Service Center;
- Use new collection vehicles for all services; and
- Use of new collection Carts and Bins for all services.

Contractor Payments to City

- Reimbursement for Procurement Development Process;
- Monthly Administrative Fee;
- Monthly AB 939 Support Fee;
- Annual Vehicle Impact Fee; and
- Reimbursement for all costs to conduct Detailed Rate Reviews, if performed
- Reimbursement for all costs to conduct Performance Reviews.

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2 BACKGROUND INFORMATION

2.1 Introduction

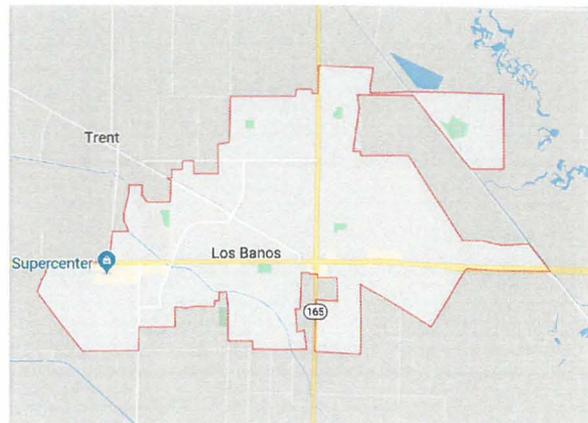
The purpose of this section of the RFP documents is to familiarize prospective Proposers with the City and its current and proposed solid waste services.

Any term that is capitalized in this section is specifically defined in the Franchise Agreement, and the meaning of such term is solely as defined therein. **Each Proposer is encouraged to fully review the Draft Franchise Agreement upon its release.** A copy of the Draft Franchise Agreement will be made available in electronic form via an addendum to this RFP posted to the City's website following the MANDATORY pre-proposal video conference.

2.2 Geography and Demographics

The City of Los Banos on the west side of the San Joaquin Valley, approximately 26 miles southwest of Merced and within Merced County.

The City of Los Banos is a community of about 43,000 with a projected annual growth at 2.2%, situated within a valley in southern California. Currently there are 11,111 Residential Accounts, and 587 Commercial Accounts



2.3 Collection System Data

The information regarding the current collection system is being provided to give prospective Proposers a general understanding of the current collection system. **Please note that the information in this section, including Tables 2 through 4, is provided as background to the Proposers responding to the RFP issued by the City of Los Banos. The City neither warrants nor accepts responsibility for the accuracy of the information contained herein. It is the responsibility of the Proposer, at its sole cost, to conduct its own investigation and research and to independently verify all material facts and information necessary for it to submit a response to this RFP.**

2.3.1 Current Collection Services

Republic Services (Republic) currently provides and Solid Waste, Recyclable Materials, and Green Waste Collection and Transportation Services to the City's residents and businesses for all residential, commercial and additional services through a Franchise Agreement that will expire on June 30, 2021. No other haulers are licensed to provide any collection services within the City. The following is a summary of current services.

2.3.2 Residential Cart Collection Service Programs

SFD Service Recipients currently receive a wheeled Cart for Garbage, Recyclable Material and Green Waste, based on volumetric need. The details of current services for SFD Service Recipients are as follows:

- Weekly curbside collection of Garbage (64- and 96-Gallon Carts are available);
- Weekly curbside collection of Recyclable Material (96-Gallon Carts are available);

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- Weekly curbside collection of Green Waste (96-Gallon Carts are available);
- Holiday Tree collection;
- On-Premises Collection free to eligible participants (physically unable to move Carts), or at an additional charge upon request by Service Recipient; and
- On-Call Bulky Waste Collections per Agreement Year, at cost.

2.3.3 Multi-Family Collection Service Programs

MFD Service Recipients currently receive weekly collection of bins or carts for Garbage and cart collection for Recyclable material, both based on volumetric need. Republic must offer Green Waste Collection Services to all MFD premises.

2.3.4 Commercial Collection Service Programs

Commercial Service Recipients currently receive wheeled Carts or Bins for Garbage, and Recyclable Material, based on volumetric need. Commercial Collection Service is provided to Service Recipients on an at least weekly basis, up to six (6) times per week. Republic to collect Green Waste as frequently as scheduled by customer.

2.3.5 Debris Box and Roll-off Collection Services

Currently, temporary debris box and roll-off services are provided to Service Recipients on an as-needed basis by Republic.

2.4 Service Rates

Commercial Service Recipients are charged monthly rates by the City based on container size and the frequency of collection. Residential Service Recipients are charged monthly by the City with rates based on container size. Roll-off Service Recipients are charged on a per-pull basis plus the cost of disposal. See Table 4 for additional information.

2.5 Additional Services

2.5.1 Collection from City Facilities

Republic provides free Collection Services to designated City Facilities.

2.6 Service Data

Table 2 on the following pages include Service Recipient data reported by Republic in July 2019. Table 3 includes the reported tonnage data from Republic in 2017 and 2018. Table 4 below provides the current Service Rates, which became effective on July 1, 2019. ***The City does not guarantee the accuracy of the information provided in Table 2 or Table 3 below. As noted above, the City neither warrants nor accepts responsibility for the accuracy of the information contained herein. It is the responsibility of the Proposer, at its sole cost, to conduct its own investigation and research and to independently verify all material facts and information necessary for it to submit a response to this RFP.***

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TABLE 3		
Tonnage Data		
(as Reported by Republic)		
	2017 Tons	2018 Tons
Residential		
Residential Disposed	11,848	12,274
Residential Recycled	2,892	3,244
Residential Green Waste Recycled	5,154	4,785
Subtotal Residential Disposed	11,848	12,274
Subtotal Residential Diverted	8,045	8,029
Subtotal Residential	19,893	20,303
Commercial		
Commercial Waste Disposed	7,935	7,882
Commercial Recycled	310	494
Commercial Green Waste/Organics Recycled	0	0
Subtotal Commercial Disposed	7,935	7,882
Subtotal Commercial Diverted	310	494
Subtotal Commercial	8,244	8,376
Roll off/Debris Box		
Roll off/Debris Box Disposed	1,067	1,150
Roll off/Debris Box Recycled	0	61
Subtotal Roll off/Debris Box Disposed	1,067	1,150
Subtotal Roll off/Debris Box Diverted	0	61
Subtotal Roll off	1,067	1,211
Total		
Total Disposed	20,849	21,307
Total Diverted	8,355	8,584
Total Residential, Commercial and Roll-off/Debris Box	29,204	29,890
Commercial Diversion Rate	3.8%	5.9%
Residential Diversion Rate	40.4%	39.5%
Total Diversion Rate	28.6%	28.7%

City of Los Banos Request for Proposals for Residential and Commercial Garbage, Recyclable
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TABLE 4						
Current Service Rates (Effective July 1, 2019)						
Residential Service Rates						
Garbage	Monthly					
64-Gallon	\$39.32					
96-Gallon	\$58.98					
Recycle	Monthly					
96-Gallon	Bundled					
Green Waste	Monthly					
96-Gallon	Bundled					
Commercial Garbage Service Rates						
Description	Monthly Rates – Collection Frequency					
	1/Week	2/Week	3/Week	4/Week	5/Week	6/Week
64-Gallon	\$34.56					
96-Gallon	\$51.85					
1 Cubic Yard	\$103.77	\$153.10	\$207.51	\$261.99	\$313.86	\$373.59
1.5 Cubic Yard	\$119.30	\$184.11	\$249.01	\$324.27	\$415.05	\$474.71
3 Cubic Yard	\$194.60	\$352.53	\$511.08	\$640.76	\$762.73	\$874.21
6 Cubic	\$308.82	\$573.53	\$794.07	\$1,014.71	\$1,235.30	\$1,455.85
8 Cubic Yard	\$414.73	\$705.88	\$970.59	\$1,235.30	\$1,477.96	\$1,720.57
On-Call Bin	Delivery Charge		One Dump		Extra Dump	
3 Cubic Yard	\$28.74		\$72.07		\$72.07	
6 Cubic Yard	\$28.74		\$114.37		\$114.37	
Commercial Recyclable Material Service Rates						
Recycle	Flat Rate					
96-Gallon	\$5.55					
1.5 Cubic Yard	\$73.42					
3 Cubic Yard	\$123.98					
6 Cubic Yard	\$206.27					
* A complete current approved rate sheet is available on the City of Los Banos website at the following URL: http://www.losbanos.org/city-government/departments/financebuilding/						

3 PROPOSED SERVICES

Collection Services included in this procurement process are to be provided in the incorporated City limits of Los Banos (“City Service Area”). Following City Council approval, Collection Services will start on July 1, 2021 and will terminate on June 31, 2031, providing for a ten (10) year Agreement. The term of the Agreement may be extended by up to five (5) additional years, at the City’s sole option, subject to City Council approval, and subject to the Contractor meeting performance requirements as specified in the Franchise Agreement.

The City is proposing that the following Collection Services be provided within the City Service Area. Proposers should note that the City is very interested in providing these services with minimum disruption to residents and businesses. Therefore, as part of the Operations Plan requested in Section 5.5.4.2 of this RFP, Proposers will be required to discuss the methodology they will use to minimize the impact of any operational changes that may occur.

Proposers should also note that the City is interested in providing these services in the most sustainable manner possible, such as, but not limited to, providing the following:

- State-of-the-art processing facilities that at all times meet or exceed all federal, state, and local permitting requirements;
- Incorporating education and outreach programs to further the City’s diversion requirements and goals;
- Educating Service Recipients on the benefits of diversion program participation; and
- Reducing air emissions and wear-and-tear on City streets and Environmental Stewardship including the use of local vendors and innovative “green” approaches to providing services.

Therefore, as part of the Diversion Plan requested in Section 5.5.4.4 of this RFP, Proposers will be required to discuss the methodology they will use to provide sustainability programs associated with providing requested services.

3.1 Overview of Base Services

The City’s SFD, MFD and Commercial Service Recipients shall receive Solid Waste Collection Services which include minimum collection services of at least weekly collection of Garbage, Source Separated Recyclable Material and Source Separated Organic Waste. By default, Source Separated Organic Waste Collection Service is required to include Green Waste, Food Waste, or a mix of Green Waste and Food Waste for all Service Recipients. The selected Contractor will be required to collect all source separated Organic Waste and process for diversion from landfill in a manner that guarantees diversion credit under the requirements of AB 939 and AB 1594, and not use source separated Organic Waste as Alternative Daily Cover (ADC) at a landfill.

Source separated Recyclable Material accepted as part of the Collection Services includes cans (aluminum and tin), glass bottles, newspaper, mixed paper, cardboard, and plastics. SFD, MFD, Commercial, and City Service Recipients (services provided to the City) shall be serviced using the designated sizes of Carts and Bins, as well as 10 to 40 cubic yard Roll-off Containers for permanent Roll-off Service Recipients.

3.2 Single Family Dwelling (SFD) Collection Services

3.2.1 SFD Bundled Service

The City wishes to retain a weekly SFD Solid Waste Collection Service system, utilizing one (1) 96-Gallon Garbage Cart (with the option to downsize to a 32- or 64-Gallon Garbage Cart), one (1) 96-Gallon Recycling Cart, and one (1) 96-Gallon Organic Waste Cart as part of the **base SFD Solid Waste Collection Service**.

On-premise collection must be made available to eligible participants (physically unable to move carts) at no additional cost.

3.2.2 SFD Garbage Collection Service

The City wishes to retain a single-stream, weekly, automated SFD Garbage Collection Service program consisting of Garbage Carts in 32-, 64- and 96-Gallon sizes. Proposers are required to provide pricing for the 64-, and 96-Gallon Garbage Carts requested by SFD Service Recipients. The 32- and 64-Gallon Garbage Carts will be set at the same Service Rate.

3.2.3 SFD Recycling Collection Service

The City wishes to retain a single-stream, weekly, automated SFD Recycling Collection Service program, utilizing a 96-Gallon Recycling Carts. **One (1) 96-Gallon Recycling Cart will be provided to each Service Recipient as part of the base service to SFD Service Recipients.** Proposers must provide pricing for additional 96-Gallon Recycling Carts requested by SFD Service Recipients. Revenue credit (or cost) for the base SFD Recycling Collection Service is to be included in the SFD Service Rates.

3.2.4 SFD Organic Waste Collection Service

The City wishes to include in the SFD Organic Waste Collection Services Green Waste and Food Waste, utilizing 96-Gallon Carts. **One (1) 96-Gallon Organic Waste Cart will be provided to each Service Recipient as part of the base service to SFD Service Recipients.** SFD Service Recipients may request additional carts for an additional cost. The cost for the base SFD Organic Waste Service is to be included in the SFD Service Rates.

Holiday Tree Collection is to be included as part of the curbside Organic Waste Collection Services program, starting December 26 through the second Friday in January of each year.

3.2.5 SFD Bulky Waste Collection Service

The City is requesting to continue Bulky Waste Collection Services provided to SFD residents. This service includes the on-call collection of Bulky Waste (such as furniture, carpets, mattresses, wood or Yard Trimmings, discarded household goods, etc.) of three (3) cubic yards per collection, up to four (4) times per year for SFD Service Recipients at no additional charge, at the request of the SFD Service Recipient. Bulky Waste Collection Services are to be provided within five (5) days of the request.

The cost for Bulky Waste Collection Service will be “bundled” into the SFD Service Rates.

3.3 Multi-Family Dwelling (MFD) Collection Services

3.3.1 MFD Bundled Service

The City wishes to have a weekly MFD Solid Waste Collection Service system, utilizing Garbage Carts and/or Bins as requested by the MFD Service Recipient, and including at no additional cost the equivalent volume of one (1) 32-Gallon Recycling Cart per unit in the MFD complex, and one (1) 32-Gallon Organic

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Waste Cart per unit in the MFD complex as part of the base MFD Solid Waste Collection Service. The actual configuration of Recycling and Organic Waste Cart and/or Bin sizes shall be based on the total equivalent volume and configured in a manner determined by the Service Recipient in consultation with the Contractor.

MFD Service recipients may request additional carts and/or bins or increase their collection frequency for an additional cost.

3.3.2 MFD Garbage Collection Service

The City wishes to retain the current MFD Garbage Collection Service collection system, utilizing variable size Garbage Carts (32-, 64-, and 96-Gallon) and Garbage Bins (1-8 cubic yard bins; 10-40 cubic yard roll-offs). Proposers must provide pricing for all container sizes listed here and in Form I.

3.3.3 MFD Recycling Collection Service

The City wishes to expand the current MFD Recycling Collection Service program for all MFD Service Recipients in the Service Area by utilizing variable-size Recycling Carts and Recycling Bins. The equivalent volume of **one (1) 32-Gallon Recycling Cart per unit in the MFD complex will be provided to MFD Service Recipients as part of the base service to MFD Service Recipients.** Additional MFD Recycling Collection Service may be provided for an additional cost in variable size Recycling Carts and/or Recycling Bins, with the volume, collection frequency and container type based on the individual needs of the MFD complex. The Contractor will be required to furnish the necessary number and size of Recycling Bins and Recycling to accommodate the MFD Recycling Collection Services.

Revenue credit (or cost) for MFD Recycling Collection Service is to be separately accounted for in the MFD Service Rates.

3.3.4 MFD Organic Waste Collection Service

The Contractor will provide MFD Organic Waste Collection Service to all MFD Service Recipients in the Service Area, consistent with State requirements of AB 1826 and SB 1383. MFD Organic Waste Collection Service is required to include Green waste and Food Waste in this program. Each MFD Service Recipient will receive the equivalent volume of **one (1) 32-Gallon Organic Waste Cart per unit in the MFD complex as part of the base service** (Contractor will be responsible for identifying the number of units with the MFD property manager and determining the correct equivalent configuration of Carts and/or Bins). Additional MFD Organics Waste Collection Service may be provided in variable size Organics Carts and/or Organics Bins, with the volume, collection frequency and container type based on the individual needs of the MFD complex. The Contractor will be required to furnish the necessary number and size of Organic Waste Bins and Organic Waste Carts to accommodate the MFD Recycling Collection Services. The cost for MFD Organic Waste Service is to be separately accounted for in the MFD Service Rates. This service is to be arranged by the property manager of the MFD complex.

The City is interested in proposals that can provide solutions for providing MFD Organic Collection Service in mixed-use complexes (MFD and Commercial Service Recipients that have limited space for collection Carts or Bins, and/or Bin enclosures). The use of split Carts and/or split Bins is acceptable.

Holiday Tree Collection is to be included as part of the curbside Organic Waste Collection Services program, starting December 26 through the second Friday in January of each year.

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3.3.5 MFD Bulky Waste Collection Service

The City is requesting that the selected Contractor provide enhancement of Bulky Waste Services to MFD Service Recipients. This service will include the on-call collection of Bulky Waste (such as furniture, carpets, mattresses, wood or Yard Trimmings, discarded household goods) of 0.5 cubic yards per individual unit for MFD complexes, up to four (4) times per year at no additional charge for MFD Service Recipients, to be arranged with the MFD property manager. Bulky Waste Collection Services are to be provided within five (5) days of the request.

The cost for Bulky Waste Collection Service will be “bundled” into the MFD Collection Rates proposed on Form I.

3.4 Commercial Collection Services

3.4.1 Commercial Bundled Service

The City wishes to retain a weekly Commercial Solid Waste Collection Service system, utilizing Garbage Carts and/or Bins as requested by the Commercial Service Recipient, and including at no additional cost the equivalent volume of one (1) 96-Gallon Recycling Cart per unit (one or two carts), and one (1) 64-Gallon Organic Waste Cart per unit as part of the base Commercial Collection Service. The actual configuration of Recycling and Organic Waste Cart and/or Bin sizes shall be based on the total equivalent volume and configured in a manner determined by the Service Recipient in consultation with the Contractor. Proposers are required to provide pricing for collection of the base services and for any additional services that may be requested by the Commercial Service Recipient.

3.4.2 Commercial Garbage Collection Service

The City wishes to retain the current Commercial Garbage Collection Service collection system, utilizing variable size Garbage Carts (64-and 96-Gallon) and Garbage Bins (1-8 cubic yard bins; 10-40 cubic yard roll-offs). Proposers must provide pricing for all container sizes listed here and in Form I.

3.4.3 Commercial Recycling Collection Service

The City wishes to expand the current single-stream Commercial Recycling Collection Service program, utilizing variable size Recycling Carts and Recycling Bins, to all Commercial Service Recipients in the Service Area, consistent with the State requirements of AB 341. Each Commercial Service Recipient will receive the equivalent volume of one (1) 96-Gallon Recycling Cart (per individual unit if shared service is provided) at no additional cost as part of the base service (the actual configuration of Carts and/or Bins may be determined between the Contractor and the Service Recipient; up to two (2) smaller size Carts may be provided if necessary to meet space constraints). Additional Commercial Recycling Collection Service may be provided in variable-size Carts and/or Bins, with the volume, collection frequency and container type to be based on the individual needs of the Commercial Service Recipient or Commercial complex. Revenue credit (or cost) for Commercial Recycling Collection Service is to be separately accounted for as a component in the Commercial Service Rates. The Contractor will be required to furnish the necessary number and size of Recycling Bins and Recycling Carts to accommodate the Commercial Recycling Collection Service.

3.4.4 Commercial Organic Waste Collection Service

The City wishes to expand the provision of Organic Waste Collection Service to all Commercial Service Recipients in the City Service Area, including Food Waste, consistent with State requirements of AB 1826 and SB 1383. Commercial Organic Waste Collection Service is required to include both Green Waste and

Food Waste. Each Commercial Service Recipient will receive the equivalent volume of **one (1) 64-Gallon Organic Waste Cart** (per individual unit if shared service is provided) at no additional cost as part of the base service (the actual configuration of Carts and/or Bins may be determined between the Contractor and the Service Recipient; up to two (2) smaller size Carts may be provided if necessary to meet space constraints). Additional Commercial Organic Waste Collection Service may be provided in variable-size Organics Carts and/or Organics Bins, with the volume, collection frequency and container type to be based on the individual needs of the Commercial Service Recipient or Commercial complex. Large generators of Yard Waste may also subscribe to collection of Yard Waste only (in addition to the required base service).

This service is to be arranged by the Commercial Service Recipient or the property manager of the Commercial complex, as appropriate. The cost for Commercial Organic Waste Service is to be separately accounted for in the Commercial Service Rates.

3.5 Additional Services

3.5.1 Collection from City Service Recipients and City-Supported Events

The Contractor will provide collection services to all City Facilities, at no cost to the City. These services include the collection of Garbage, Recyclable Material and Organic Waste from City Facilities. This service also includes collection of City-generated Bulky Waste from City facilities. Frequency of service will be determined by location need. A list of current locations and service levels will be provided in the Draft Franchise Agreement.

The Contractor will provide Solid Waste Collection Services for up to fifteen (15) City-Supported Events, at no cost to the City, annually.

3.5.2 Non-City Large Venue and Event Collection Service

The Proposer must include a rate structure for the collection of Garbage, Recyclable Material and Organic Waste for Non-City Large Venue and Event Collection Services as part of the exclusive Franchise Agreement. These rates are to be included in Form I.

3.5.3 Education and Outreach Program

Contractor must provide an on-going and effective Education and Outreach Program, provided to SFD, MFD, Commercial and City Service Recipients to assist the City in meeting its diversion requirements and goals. The Education and Outreach Program may involve the development of education and outreach materials, staffing at City-Supported Events, a City-specific website that fully explains the Contractor's services and rates, effectively promotes the diversion options offered to Service Recipients, and allows Service Recipients to submit service changes, inquiries, complaints or queries, as well as other social media platforms, and other strategies. The Proposer must include specific details of the proposed Education and Outreach Program, how the program will be managed, and how effectiveness of the program will be measured on an ongoing basis. These indicators are to be incorporated into the on-going reports provided to the City, and the City reserves its right to re-direct Contractor's efforts, or require additional Contractor efforts if the Education and Outreach Program is not showing measurable and tangible results as proposed.

Education and Outreach Program responsibilities will include, but are not limited to, the following:

- AB 341, AB 1826, and SB 1383 implementation, including conducting on-site waste audits and providing written summary reports for all Service Recipients at least once per year for the first four (4) years of the term. Thereafter, on-site waste audits will be conducted for a minimum of

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twenty-five percent (25%) of all Service Recipients, with the primary focus on those Service Recipients with the lowest program participation or diversion. The results of the waste audits and on-going AB 341, AB 1826, and SB 1383 compliance reports will be provided to the City;

- Educate City staff and Service Recipients as appropriate, regarding AB 341, AB 1826, AB 1594, SB 1383, and other State legislation;
- Right-size containers for maximizing diversion from SFD, MFD and Commercial Service Recipients;
- Develop and distribute public education and outreach material for SFD, MFD and Commercial Service Recipients;
- Advise appropriate personnel (management, employees, janitors, etc.) at MFD and Commercial Service Recipients on methods and recommendations to increase recycling and decrease landfilling (i.e. how to maximize diversion; and provide educational materials, posters, labels, and memos.);
- Inform and educate Service Recipients on the full range of all services being offered, including Cart and Bin exchange and cleaning, HHW Drop-Off locations, HHW Collection annual events, Clean-Up Day annual events, and Bulky Waste Collection, and availability of Indoor Food Waste Pails/Containers;
- Advise Service Recipients on the selection of collection services and container sizes to maximize diversion, and the potential cost control if a Service Recipient takes recommended actions to increase diversion;
- Educate Service Recipients, especially MFD and Commercial Service Recipients, on how to participate in Recycling and Organics diversion programs, and decrease or eliminate contamination; and
- Educate and train staff and custodians on best practices for recycling, waste reduction and availability and use of in-house recycling containers.

Beginning in July 2021 and for the following twelve (12) months, the Contractor will meet with key City staff on a monthly basis to review, at a minimum, program performance, current and anticipated activities, specific outreach performed to promote high participation in diversion programs, ability for Service Recipients to change service levels, awareness of and participation in Bulky Waste Collection, methods to monitor contamination, Service Recipient service messaging on diversion programs. Starting in July 2022, at the City's option, the frequency of meetings may be reduced.

The Contractor may use subcontractors to perform some or all the duties normally assigned to outreach staff. The City will approve any such subcontractors in advance. **The City will approve the specific program activities associated with the Education and Outreach Program, and the selected Contractor's Education and Outreach Plan will be included as an exhibit to the final executed Franchise Agreement.**

3.5.4 Residential Household Hazardous Waste (HHW), Electronic Waste, and Used Oil Drop-Off Program

The selected Contractor will provide a permanent drop-off location within the City for the collection of HHW, E-Waste, Used Oil and Used Oil Filters from SFD and MFD Service Recipients. The Contractor shall not be required to collect more than two (2) gallons of used motor oil per drop-off collection.

The selected Contractor must provide at least one (1) annual HHW Drop-Off Collection Event within the City Limits for City residents. The location of this event will be at a mutually agreed upon location between

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the City and the selected Contractor. This service would be provided in addition to the HHW Drop-Off service. The cost for this service is to be bundled in the SFD and MFD Solid Waste Collection Service rates.

3.5.5 Residential Clean-Up Day Events

The selected Contractor must provide SFD and MFD Service Recipients with four (4) Clean-Up Day events annually. Residents of the City are allowed to drop off Garbage, including Bulky Items, for disposal. The cost for this service is to be bundled in the SFD and MFD Solid Waste Collection Service rates

3.5.6 Free Paper Shredding Events

Four (4) times per year, concurrent with a Clean-Up Days Event, at no additional cost to City or its residents, the selected Contractor will conduct a free paper shredding event at the same location as the Clean-Up Day Events. At each event, all City residents will be permitted to deliver an unlimited amount of paper for shredding free of charge by Contractor. Contractor must arrange for all shredded paper generated by each event to be processed in such a manner so as to ensure the diversion of this material from landfilling.

3.5.7 Mulch or Compost Delivery

At no cost to the City, the selected Contractor must provide the City with up to 2,000 cubic yards of mulch or 1,000 cubic yards of compost materials (i.e., "Recovered Organic Materials"). The Contractor must deliver mulch or compost materials at a time and location mutually agreeable between the City and the Contractor. Delivered mulch or compost can be in bulk form or bagged

3.5.8 Edible Food Recover Support

At no cost to the City, the selected Contractor must provide support to the City's Edible Food Recovery program as required under SB 1383. Contractor support may include educating commercial edible food generators, and providing records of site visits, conducting education efforts, and listing food recovery organizations.

3.5.9 Temporary Debris Box Collection Services

Temporary Debris Box Collection Service is included in the exclusive franchise agreement, and as such, rates are set for Temporary Debris Box Collection Service in Form I.

3.6 Collection Containers

Contractor must provide Collection Containers that are compliant with SB 1383. Each container must be newly painted in a color distinctive to each use and all bins for the same use shall be colored the same. Each container shall be marked with an adhesive label or imprinted with its intended usage in letters and pictures. The label shall specify what materials are allowed to be placed in each container. Labels must represent acceptable versus unacceptable items in written or graphic form. The following colors shall be used for collection container lids: Garbage (black or grey); Recyclable Materials (blue); Organic Materials (green); Contractor-owned Compactor Bins (color appropriate to content as previously designated); Food Waste (yellow).

Contractor must provide Carts in the sizes specified in this RFP, upon commencement of service. The Contractor must also provide Bins ranging in size from 1 to 8-cubic yard capacity for collection from MFD Service Recipients, Commercial Service Recipients, and City facilities, except for Organics Bins which shall be provided in sizes ranging from 1 to 3-cubic yard capacity. **Carts and Bins must be new at the start of the contract.** The cost for this service is to be bundled in the Collection Service rates and not charged as

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a separate cost to the Service Recipient. Roll-off Containers ranging in size from 10 to 40 cubic yards will be provided to Service Recipients utilizing permanent Roll-off Containers for regular weekly scheduled collection service. Usage of used Carts and Bins require the prior written approval of the City. Proposer's Cart and Bin specifications will be included in the final Franchise Agreement. The City may inspect the condition of the Carts and Bins, and may require immediate replacement of Carts or Bins if they are determined by the City not to be in good working order or visually acceptable appearance.

The City anticipates that during the term of the proposed Franchise Agreement, Carts will need to be repaired and/or replaced with new Carts. Accordingly, all new Carts will have heavy duty wheels, attached hinged lids, and be designed to be resistant to inadvertent tipping due to high winds. All new or replacement Carts must be compatible with automated collection and similar to the existing Carts. The City will approve the specific colors of the Carts (blue for Recyclable Material, green for Organic Waste, and black or grey for Garbage) and Cart design (square, rectangular, tall, short). The lids and bases on all Carts must have matching colors. All new or replacement Carts will be manufactured with a minimum twenty percent (20%) recycled material content and come with a ten (10) year warranty against defects. **The City strongly encourages new and replacement Carts with a higher recycled content than twenty percent (20%).** The City also requires that all new or replacement Carts be hot-stamped, embossed, or labeled/decals with the "Disposal Company", a unique identification number, and images of the type of materials to be collected (i.e., Garbage, Organic Waste, Recyclable Material). All Carts shall also contain instructions for proper usage. If any of the above is accomplished via labels or decals, such labels or decals must be maintained and/or replaced as necessary throughout the term to maintain a near new appearance. The Carts shall contain all writing in both English and Spanish languages.

Throughout the term of the Franchise Agreement, at no cost to Service Recipients, Contractor must replace or repair Carts or Bins if replacement or repair is due to wear from normal use, or damage caused by the Contractor. In addition, Service Recipients may request a Cart or Bin exchange for each commodity type twice during the term of the Agreement at no cost to the Service Recipient. However, if the Cart or Bin is damaged by Service Recipient, Contractor may charge for the repair or replacement. Replacement or repair of a Bin or Cart is to be done by the next regularly scheduled collection day after verbal or written notice by the City, a Service Recipient, or as observed by Contractor's staff. **At a minimum, the City will assess liquidated damages for Carts or Bins not in good working order or visually deficient, Contractor not replacing or repairing Carts or Bins as required by the Franchise Agreement, leaky oil collection containers, or for Carts or Bins not properly labeled.**

3.7 Collection Vehicles

Upon commencement of the Franchise Agreement and throughout the term of the agreement, the Contractor must provide collection vehicles that comply with federal, state, regional and local clean air and safety standards. **Collection vehicles must be new at the start of the Agreement.** The specific type of fuel to be used is to be proposed by the Proposers. Proposers also must demonstrate how their collection vehicles will comply with California Air Resource Board standards. ***The City encourages the use of collection vehicles that exceed the minimum standards, including the use of CNG/LNG/Electric powered vehicles.*** Additionally, if during the term of the Franchise Agreement, new technologies are available such as hybrid or electric powered collection vehicles, the City or the Contractor may request/negotiate implementation of such new collection vehicles, with a corresponding change on Service Rates to reflect additional cost or savings.

The City is also concerned with additional wear to the City's streets from collection vehicles. The City is interested in collection methods and collection vehicles that minimize wear on the City's streets.

Proposers must specify the gross operating weight of the collection vehicles, the methods to monitor, report and eliminate overweight collection vehicles from operating within the City. **The City will assess liquidated damages for vehicles that exceed local, state or federal maximum loaded vehicle weights, collection vehicles not meeting the required performance standards, or leaking fuel, oil, coolant, or hydraulic fluids on the public or private streets and parking lots located within the City.**

Proposers are required to provide a description of how their collection vehicles and collection methods will minimize wear on the City's streets.

All collection vehicles will be equipped with GPS tracking devices that can be used to record start and stop times, vehicle locations, and maximum speed. All collection vehicles must meet federal, state, and local maximum noise standards, and be repainted at least once every five (5) years, or as reasonably determined by the Agreement Administrator to maintain a positive public image. In addition, vehicles that will be used on a temporary basis (during regular vehicle maintenance or repair) must meet all the Franchise Agreement specifications if they are used more than forty-five (45) days per year.

Additional details on specific vehicle requirements can be found in the Draft Franchise Agreement, to be provided via Addendum.

3.8 Collection Hours and Days

SFD collection hours shall be between 6:00 a.m. and 6:00 p.m., Monday through Friday. MFD collection hours shall be between 6:00 a.m. and 6:00 p.m., Monday through Saturday. Commercial and City collection hours shall be between 4:00 a.m. and 6:00 p.m. Monday through Saturday, and between 6:00 a.m. and 6:00 p.m. on Sunday. The City may also require restricted collection hours in areas impacted by commute traffic, road repair, around schools, in areas where commercial collection is within one hundred (100) feet of residential housing, or where continued noise complaints about collection vehicles have occurred.

3.9 Disposal and Processing Facilities

The Proposer agrees, without constraint as a free-market business decision in accepting this Agreement, agrees to use the Disposal Site, Recyclable Materials Processing Site, and Organic Materials Processing Site as approved and directed by the City for the purpose of Disposing of all solid waste, and Transfer and Processing of all Recyclable Materials and Organic Waste it collects in the City. Such decision by the Proposer in no way constitutes a restraint of trade notwithstanding any change in Law regarding flow control limitations or any definition thereof.

3.10 Diversion Standards

The Contractor will be responsible for diverting from disposal at least **forty percent (40%)** of all materials the Contractor collects from all services under the provisions of the Franchise Agreement, starting July 1, 2021, and measured for calendar year 2021. Subsequently, Contractor shall divert a minimum of forty-five percent (45%) of all materials it collects pursuant to this Agreement for calendar year 2022, fifty percent (50%) of the materials it collects pursuant to this Agreement for calendar years 2023 and 2024, and fifty-five percent (55%) of the materials it collects pursuant to this Agreement for calendar year 2025 and onwards. The Proposer must also provide their methodology for assisting the City in achieving the State's seventy-five percent (75%) diversion goal.

3.11 Displaced Employees

The City requires that the selected contractor offers employment to displaced employees of the prior contractor (and, if applicable, subcontractor) for a period of not less than ninety (90) days and to comply with the requirements of sections 1072 and 1075 of the California Labor Code. Proposers shall include a declaration of intent in the cover letter of their proposal, indicating their agreement to retain the employees of the prior contractor/subcontractor for a period of not less than ninety (90) days pursuant to section 1072(a) of the California Labor Code. Any proposer, with the exception of the incumbent, that fails to include such a declaration in the cover letter of its proposal may be considered non-responsive, and, if so, its proposal will not receive further consideration.

Prior to contract award, the City will require the selected contractor to affirm its commitment to provide offers of employment to displaced employees, including the provision to employ displaced employees for not less than ninety (90) days. The City will also require the selected contractor to agree to make information about wage rates, benefits and job classifications of employees available to the City prior to subsequent procurement for solid waste collection and transportation services.

The following table provides additional information on the employees of the current contractor.

TABLE 5							
Employees of Current Contractor (will be provided as an Addendum)							
Job Title	Rate of Pay	Union Code	Number of Employees	Sick Leave	Holidays	Health	Vacation
Residential Garbage Driver							
Residential Recycle Driver							
Residential Green Waste Driver							
Roll Off Driver Class B CDL							
Commercial Garbage Driver							
Commercial Recycle Driver							
Commercial Green Waste Driver							

3.12 Billing and Customer Service

The City shall be responsible for the billing and collection of payments from Service Recipients for Collection Service at the Service Rates set forth in Exhibit 1 of the Agreement. Billings may be made monthly or bimonthly for Service Recipients, as determined by City.

The Contractor shall be responsible for providing the City with complete customer billing account and service level data for all Collection services provided by Contractor under this Agreement during the prior month, in an electronic format that is acceptable to the City. Each invoice shall be accompanied by an accounting, which sets forth Contractor's Gross Billings for all services provided during the preceding month in sufficient detail to allow for an independent recalculation of monies due to Contractor. This information will be provided on a monthly basis by the 15th day of the month for services provided by Contractor during the prior month. Any changes to the electronic format or submission date shall be expressly approved in writing by the City.

The Contractor will provide competent, professional, and courteous customer service and will designate a sufficient number of full-time equivalent Customer Service Representatives (CSRs) to serve the City, its residents and businesses during the transition prior to the start date, and during start-up of pilot programs and/or new or modified City-wide programs. The Contractor will have a local office to conduct all of the Customer Service operations out of, with regular business hours of 8 a.m. to 6 p.m. Monday through Saturday. If the Contractor is found to be providing a level of customer service below the expectations of the City, the City has right to apply Liquidated Damage penalties on the Contractor until the Contractor can show that they are performing customer service operations at acceptable levels. Proposer must also include a narrative describing their approach to customer service and complaint resolution.

3.13 Service Rates

The City wishes to provide incentives for residents and businesses to actively participate in Recycling and Organics programs, while not being required to over-subscribe for services. Service Rates will be based on the Garbage, Organic Waste and Recyclable Material container capacity, and/or the number of containers and frequency of collection.

Maximum Services Rates will be effective July 1, 2021 and will be adjusted beginning July 1, 2022, and each July 1 thereafter during the term of the Agreement by multiplying the prior year's Maximum Service Rate by 1 plus 80% of the percentage change in the "Consumer Price Index (San Francisco – Oakland – Hayward, All Urban Consumers, Not Seasonally Adjusted)," (or another mutually agreed-upon index if this one is no longer published) between the most recently published February index and the corresponding index published twelve months earlier, or 3.5% whichever is less, with an adjustment floor of 0.0%. Adjusted Service Rates shall be rounded to the nearest cent.

3.14 Contractor Compensation

City shall pay Contractor on the last day of each month for services provided by Contractor during the prior invoice period. The City shall deduct from the payments due to Contractor by City the amounts as set forth in Section 3.15 below.

3.14.1 Adjustments to Contractor's Compensation.

Contractor's sole compensation is derived from the application of the Service Rates to actual services provided to SFD, MFD, and Commercial Service Recipients. The Service Rates are as specified in **Exhibit 1**

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of this Agreement, and are firm and fixed from July 1, 2021 through June 30, 2022. Contractor shall not be entitled to any compensation that is not listed in **Exhibit 1**, as adjusted from time to time in accordance with this Franchise Agreement. On or after July 1, 2022, and each subsequent July 1st, Contractor's Service Rates shall be adjusted as follows:

For each of the years during the Term of this Agreement the Contractor's compensation component for each Service Rate category shall be calculated by multiplying the prior year's rate by 1 plus 80% of the percentage change in the "Consumer Price Index (San Francisco – Oakland – Hayward, All Urban Consumers, Not Seasonally Adjusted)," (or another mutually agreed-upon index if this one is no longer published) between the most recently published February index and the corresponding index published twelve months earlier, or 3.5% whichever is less, with an adjustment floor set at 0.0% Adjusted Service Rates shall be rounded to the nearest cent.

$$\text{Service Rate} = \text{Prior Years' Service Rate} \times (0.80 ((\text{February 2021 CPI} - \text{February 2020 CPU}) / \text{February 2020 CPI})) + \text{Prior Year's Service Rate}$$

For Example,

$$\text{Prior Year's Service Rate} = \mathbf{\$25.00}$$

$$\text{February 2021 CPI} = 180.2$$

$$\text{February 2020 CPI} = 172.8$$

$$\text{Calculated CPI} = (180.2 - 172.8) / 172.8 = 0.0428$$

$$\text{Eighty percent of Calculated CPI} = 0.0428 \times 80\% = 0.0342$$

$$\text{Amount increase} = 25.00 \times (0.0342) = \mathbf{\$0.86}$$

$$\text{Adjusted Monthly Service Rate} = \$25.00 + \$0.86 = \mathbf{\$25.86}$$

3.15 Contractor's Payments to the City

The City shall pay the Contractor for collection services provided on the last day of each month for the prior invoice period. The City will deduct from the payments due to the Contractor the following fees:

3.15.1 Administrative Fee

Contractor shall pay an Administrative Fee to the City. The Administrative Fee will be a percentage of Contractor's Gross Billings submitted to City each month under the terms of this Agreement. The Administrative Fee percentage shall be **Seven Percent (7.00%) of Gross Billings** unless otherwise adjusted by the City. In the event that the City adjusts the Administrative Fee percentage, the Maximum Service Rates will also be adjusted simultaneously and commensurately, to incorporate any such changes in the Administrative Fee percentage.

3.15.2 AB 939 Support Fee

The Contractor shall pay an AB 939 Support Fee to the City for the City's costs to provide AB 939 Support Services. The AB 939 Support Fee will be a percentage of Contractor's Gross Billings submitted to City each month under the terms of this Agreement. The AB 939 Support Fee percentage shall be **Three Percent (3.00%) of Gross Billings** unless otherwise adjusted by the City. In the event that the City adjusts the AB 939 Support Fee percentage, the Service Rates will also be adjusted simultaneously and commensurately, to incorporate any such changes in the AB 939 Support Fee percentage.

3.15.3 Vehicle Impact Fee

The Contractor shall pay a Vehicle Impact Fee to the City. For the first Agreement Year, Contractor shall pay **Four Hundred Thousand Dollars (\$400,000.00)**. Beginning July 1, 2022, the total annual amount of this fee will be adjusted annually by the same percentage change as the percentage change in Contractor's Service Rates.

3.15.4 Other Fees

The City may set other fees, as it deems necessary. Such other fees may include, but shall not be limited to, franchise fees, landfill closure funding, and street sweeping operations. The amount, time, and method of payment and adjustment process shall be set in a manner similar to that for other fees described in this Section.

3.15.5 Adjustment to Fees

City may adjust the fees established in Section 3.15 at any time during the Term of the Franchise Agreement. All changes in the total amount of fees to be collected by Contractor and remitted to the City shall be promptly reflected in an adjustment in Service Rates, such that the Contractor shall be fully compensated in its Service rates for all such fees.

3.15.6 Reimbursement for the Cost of this Procurement Process

The Contractor shall reimburse the City for the cost of this procurement up to but no more than **One Hundred and Fifty Thousand Dollars (\$150,000.00)**. This one-time payment is due within thirty (30) days of the execution date of the Franchise Agreement.

3.15.7 Detailed Rate Review

Only if requested by the City, a Detailed Rate Review may be conducted provided that a pre-established methodology is agreed to by both the City and the Contractor. The Contractor is responsible for paying for the Detailed Rate Review.

3.15.8 Annual Billing and Account Reconciliation

The Contractor must, on a quarterly basis, physically verify the Service Recipients service levels against the service billing information provided by Contractor to the City and report findings to the City. The City will, on a quarterly basis conduct an internal Billing Audit to verify that their customer billing information matches the results of the Contractor's report. Should a discrepancy be found between the Contractor's and the City's customer billing information the customer billing data will be updated in both party's customer data bases, and discrepancies shall be credited to the City or credited to the Contractor on the next month's Contractor's compensation.

3.16 Recycling Revenues

Revenues from the sale of Recyclable Material, along with the California Redemption Value (CRV) rebate from the State, will be retained by the Contractor. The City believes it is appropriate for the successful Contractor to retain these revenues, and directs Proposers to take these monies into account when completing their Service Rates.

3.17 Compost Revenues

If Proposer receives any revenues from the sale of processed organic waste (i.e. compost), it will be retained by the Contractor. The City believes it is appropriate for the successful Contractor to retain these revenues, and directs Proposers to take these monies into account when completing their Service Rates.

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4 GENERAL INSTRUCTIONS

4.1 RFP Documents

These RFP documents, any subsequent Addenda, and attachments provided on the City's website constitute the complete set of proposal specifications and forms. All forms and applicable documents must be executed and submitted in a sealed envelope, as described in Section 5 of this RFP. Proposals not submitted on the prescribed proposal forms shall be rejected. By submitting a proposal, the Proposer agrees to be subject to all terms and conditions specified herein. No exception to the terms and conditions shall be allowed. Submittal of a response to this RFP constitutes a binding offer by the Proposer.

Proposers are expected to examine the RFP documents.

4.2 Additional Terms and Conditions

Except as is set forth in Section 5.5.6 of this RFP, no additional terms and conditions included with the RFP shall be evaluated or considered.

4.3 Interpretations and Inquiries

Any questions concerning the intent, meaning, and interpretation of the RFP documents shall be submitted in writing and received no later than 4:00 p.m. PT on April 22, 2020. Questions not submitted in writing will not be accepted or considered. Written inquiries shall be addressed by email to:

City of Los Banos
Public Works Operations Manager
William Via, MPA
william.via@losbanos.org

4.4 Verbal Agreements

No verbal agreement or conversation with any elected or appointed officer, agent, or employee of the City, either before or after execution of the Franchise Agreement, shall affect or modify any of the terms or obligations contained in the Franchise Agreement. Any such verbal agreement or conversation shall be disclosed in the proposal and considered as unofficial information and in no way binding upon the City or the Proposer. No person is authorized to give oral interpretations of, or make oral changes to the RFP documents. Therefore, oral statements will not be binding and shall not be relied upon. Any interpretation of, or changes to the RFP documents will be made in the form of a written addendum to the RFP document and will be furnished by the City to all Proposers who attend the mandatory pre-proposal video conference. Addenda will be posted via the City's website at the following URL: <http://www.losbanos.org/category/rfps-and-rfqs/>.

Only those interpretations of, or changes to the RFP document that are made in writing and furnished to the Proposers by the City may be relied upon.

4.5 Qualification of Proposer

The Proposer must be qualified by experience, adequate financing and ability to provide all labor and equipment to do the work called for in the Franchise Agreement.

4.6 Conflict of Interest

All Proposers must disclose, with their proposal, the name of any officer, director, agent, stockholder, or any relative of an officer, director, agent, or stockholder who is an employee, elected official or appointed official of the City. Furthermore, all Proposers must disclose the name of any City employee, elected official or appointed official who owns, directly or indirectly, an interest of five percent (5%) or more in the Proposer's firm or any of its branches or subsidiaries.

4.7 Non-Collusion Affidavit of Proposer and Disclosure of Non-Compete Agreements

Any Proposer submitting a proposal to this RFP must complete and sign the Non-Collusion Affidavit of Proposer and Disclosure of Non-Compete Agreements form included in Section 7 of these RFP documents, and submit that document with its proposal. This shall include disclosure of any and all "non-competite agreements" that Proposer may have with other solid waste service providers that would prohibit other solid waste service providers from proposing on this RFP.

4.8 Disqualification of Proposers

More than one (1) proposal from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. Reasonable grounds for believing that a Proposer is involved in more than one proposal for the same work will be cause for rejection of all proposals in which such Proposers are believed to be involved.

4.9 Legal Requirements

Proposers are required to comply with all provisions of federal, state, county, and local laws, ordinances, rules and regulations that are applicable to the services being offered in this RFP. Lack of knowledge of the Proposer shall in no way be a cause for relief from responsibility or constitute a cognizable defense against the legal effects thereof.

4.10 Familiarity with Laws and Ordinances

The submission of a proposal for the services requested herein shall be considered as a representation that the Proposer is familiar with all Federal, State, and local laws, ordinances, rules, orders, and regulations which affect those engaged or employed in the provision of such services, or equipment used in the provision of such services, or which in any way affects the conduct of the provision of such services; and no plea of misunderstanding will be considered on account of ignorance thereof.

4.11 Contractual Agreement

The City shall not be obligated to any Proposer to enter into a Franchise Agreement with the Proposer despite the City's governing body prospectively awarding the Franchise Agreement to a Proposer. The City shall be obligated to a Proposer if and only if the City enters into a Franchise Agreement for the services with the Proposer, and further, no action will lie against the City to compel the City to execute any such Franchise Agreement, or to recover from the City any damages, costs, lost profits, expenses, etc., that any Proposer may incur if the City chooses not to sign such Franchise Agreement. Except for a proposer's obligation to negotiate the terms and conditions of a Franchise Agreement with the City, as secured by the Proposal Bond required under Sections 1.1 and 4.15, herein, no enforceable contractual relationship arises until the City signs the Franchise Agreement, no action shall require the City to sign such Franchise

Agreement at any time, and each Proposer waives all claims to damages, lost profits, costs, expenses, etc., as a result of the City not signing such Franchise Agreement.

4.12 Facilities

The City reserves the right to inspect each Proposer's facilities at any reasonable time, during normal working hours, with prior notice to determine that the Proposer has a bona fide place of business and is a responsible Proposer. The Proposer must maintain their facilities and perform collection services in compliance with City Code. Should the Proposer be found in violation with City Code, the City holds the right to withhold **ten percent (10%)** of the Contractor's compensation until compliance is achieved.

4.13 Insurance

The City will establish insurance requirements in the Franchise Agreement. Proposers must review and obtain an understanding of these requirements contained in the Draft Franchise Agreement, to be provided.

4.14 Agreement Modifications

The City reserves the right to make modifications to the Draft Franchise Agreement to more fully effectuate the intent of this RFP and the City's Collection Services program.

As stated in Section 5.5.6, Proposers may provide a list of Franchise Agreement exceptions, subject to the requirements in that section. **The City has no obligation to accept any proposed service alternative or Franchise Agreement exception.** Proposals will be evaluated based on the required services and Agreement language as set forth in this RFP.

4.15 Proposal Bond

Proposers are required to submit a separate proposal bond from a surety company licensed to do business in the state of California, or a cashier's or certified check issued by a bank in the amount of **Fifty Thousand Dollars (\$50,000)**.

A proposal will be deemed non-responsive and will not be considered unless accompanied by the proposal bond, certified check, or cashier's check. Such deposit shall be a guarantee that the Proposer, if awarded the Franchise Agreement, will furnish a performance bond and other required information. If the Proposer fails, refuses, or neglects to furnish the required performance bond and information, the City may retain the deposit or cash the certified check or enforce the proposal bond as compensation for liquidated damages for the Proposer's breach.

Bid bonds guaranteeing proposals rejected by the City of Los Banos shall become null and void and will not be returned. All other proposal securities will be held in accordance with PCC, Section 20929 "...the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the agency or district beyond 60 days from the time the award is made." If the City receives a check as a proposal bond, the City will immediately deposit the check upon opening proposals. After the proposals are opened, checked, and duly considered, the City will issue a reimbursement check if the proposal is not awarded.

4.16 Withdrawal or Revision of Proposal Prior to the Closing Time Set for Receiving Proposals

A Proposer may, prior to the due date and time of the Proposal, and without prejudice, withdraw, modify, or correct a proposal after it has been deposited with the City, provided a request is made in writing to the City, whose name, address, and contact information is provided herein. Any revision shall be deposited prior to the closing time set for receiving proposals. Modification or corrections of proposals shall be made by means of sealed written communications, provided such modifications or corrections are received by the City prior to the closing time set for receiving proposals with the outside envelope properly marked to identify that it is to be a part of this RFP.

No corrections in proposals will be acceptable unless each correction is signed by the Proposer and provided in hard-copy to the City. A proposal in which omissions occur or which has been conditioned by the Proposer in a manner that is unacceptable to the City may be rejected. Corrections may be made until the closing time set for receiving proposals in a sealed envelope, properly marked to identify that it is to be a part of this RFP. No modifications or corrections may be made subsequent to closing time set for receiving proposals.

4.17 Acceptance or Rejection of Proposals

The City reserves and holds at its discretion the following rights and options:

- Issue addenda to the RFP, including extending or otherwise revising the timeline for submittals;
- Cancel the RFP;
- Request clarification and/or additional information from the Proposer at any point in the evaluation process;
- Execute a Franchise Agreement on the sole basis of the original proposal or any one or more additions to proposal submissions;
- Reject any or all proposals, waive irregularities in any proposal, accept or reject all or any part of any proposal, waive any requirements of the RFP, as may be deemed to be in the best interest of the City; and/or
- Reissue the RFP.

Any or all proposals will be rejected if there is reason to believe that collusion existed among the Proposers. Proposals received from participants in such collusion will not be considered for the same work when and if re-advertised.

4.18 Award of Agreement

A Franchise Agreement shall be only be awarded by the Los Banos City Council and based upon the proposal which best fulfills the requirements and provides the best value to the City, its residents, and businesses. No award will be made until all necessary investigations have been made to determine the responsiveness and responsibility of the Proposer under consideration. After opening the proposals, the City may require the selected Proposer to submit a verified statement disclosing all ownership interests, whether direct, indirect, or beneficial, and including intermediate and ultimate ownership interests where several levels of ownership exist, disclosing any single source in excess of thirty percent (30%) of

outstanding debt, and disclosing any person or entity that has guaranteed in excess of thirty percent (30%) of the Proposer's outstanding debt; furthermore, such disclosure shall contain any information of or relating to any and all common ownership, control, management, or common pecuniary benefit the proposing entity, its owners, management, or representatives possess or retain in any other entity now participating, or proposing to participate, in the Franchise Agreement with the City. The City Council shall be the sole judge as to the responsiveness and the responsibility of the Proposer to satisfactorily perform the work specified within the Franchise Agreement.

As soon as practicable after opening the proposals, the Proposer recommended for award of the Franchise Agreement will be submitted to the City Council for approval.

In the event the City Council approval is not received within **one hundred and eighty (180) calendar days** after opening of the proposals, and a proposal extension is not agreed upon by the Proposer and City, then the Proposer(s) may request that it be released from the Franchise Agreement obligation and that its proposal bond is released, in which case the City shall release the Proposer's bond.

The foregoing action by the City or the Proposer(s) shall in no way provide any cause whatsoever for claim against the City by the Proposer(s).

Prior to award of a Franchise Agreement, the City will issue a "Notice of Intent" to award to all Proposers on the City's website. Proposers shall have five (5) business days from the date of the Notice of Intent to submit written protest of the City's intent to award.

4.19 Addendum

Any addenda issued in conjunction with this RFP must be submitted as part of the original proposal packet with a wet signature. Any addenda will be posted to the City's website at the following URL: <http://www.losbanos.org/category/rfps-and-rfqs/>

The Proposer shall sign each addendum issued and shall attach an addendum acknowledgement sheet to their proposal in order to have the proposal considered. If signed versions of the addenda are not included with the original proposal, the proposal will be deemed non-responsive and will not be considered. If it becomes necessary to issue an addendum that requires a change in the RFP or the Draft Franchise Agreement within five (5) days of the due date for proposals, the City will extend the due date as necessary to allow Proposers to address changes in their proposals.

Informational questions and answers that do not require formal changes to the RFP or Draft Franchise Agreement will also be posted on the City's website provided above. These may be provided as informational items, and not formal addenda.

4.20 Certification of Service Area Conditions, Service Area Requirements, and Agreement Terms

By the submission of a proposal to do the work, the Proposer certifies that a careful examination of the Service Area, all RFP documents, including the Draft Franchise Agreement, has taken place, and that the Proposer is fully informed concerning the requirements of the RFP documents and Draft Franchise Agreement, the physical conditions to be encountered in the work, the quality and quantity of service to be performed, and of materials and equipment to be furnished. **The Proposer will not be entitled to additional compensation upon subsequently finding that conditions require methods or equipment other than that anticipated in making the proposal.**

4.21 Performance Bond

A performance bond or letter of credit in the form as set forth in Form K of Section 7 of this RFP is required from the successful Proposer(s) within thirty (30) calendar days from the date the City Council approves the Franchise Agreement(s). The performance bond shall be in an amount of **One Million Five Hundred Thousand Dollars (U.S. \$1,500,000)**.

The performance bond shall be executed by a surety company licensed to do business in the State of California; having a rating of, or equivalent to "A: VII" by A.M. Best & Company, approved by the City; and included on the list of admitted surety companies approved by the Treasurer of the State of California.

The Proposer **must provide**, as a part of the proposal response, a commitment letter from a State of California admitted and licensed Surety Company, as set forth in the preceding paragraphs, to provide such performance bond.

After July 1, 2024, and annually thereafter, Contractor may request in writing that the City allow the performance bond to be reduced to fifteen percent (15%) of the Contractor's prior annual Gross Revenues. The City shall, at the sole option of the City, respond to the request in writing within forty-five (45) days of receipt of the written request. Nothing in the Franchise Agreement shall require that the City approve the request of the Contractor nor shall the City have any obligation to provide Contractor with its reasoning for approving or denying the request.

As an alternative to the performance bond required by the Franchise Agreement, at City's option, Proposer may deposit with the City an irrevocable letter of credit as set forth in the Franchise Agreement.

4.22 All Proposals are Public Records

All correspondence with the City including responses to this RFP will become the exclusive property of the City and will become public records under the California Public Records Act (Cal. Government Code sections 6250 et seq.) All documents, and non-exempt portions thereof, that are sent to the City will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.

Therefore, any proposal which contains language purporting to render all or significant portions of the proposal "Confidential", "Trade Secret" or "Proprietary" and fails to provide the exemption information required as described below will automatically be considered a public record in its entirety and shall be disclosed to the requesting party without further consideration or notice.

Do not mark your entire proposal as "Confidential".

The City will not disclose any part of any proposal before it completes negotiations, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation and negotiation process. After the completion of negotiations, all proposals received in response to this RFP will be subject to public disclosure. If you believe that there are portion(s) of your proposal which are exempt from disclosure under the Public Records Act, you must mark each page as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if you submit trade secret information, you must plainly mark the information as "Trade Secret" and refer to the appropriate section of the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. Only information claimed to be a trade secret at the time of submittal to the City of Los Banos, marked as "Confidential", "Trade Secret" or "Proprietary" and accepted by the City as exempt from disclosure, will be treated as a trade secret.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked "Trade Secret" or "Proprietary", the City will provide Proposer(s) who submitted the information with reasonable notice in order for Proposer(s) to seek protection from disclosure by a court of competent jurisdiction.

4.23 Subcontractors

Proposers must list any Subcontractors to be used for any and all services (i.e. education and outreach, processing, etc.). These Subcontractors are subject to approval by the City, and will be included as an exhibit to the final Franchise Agreement.

4.24 Business License

A City of Los Banos Business License is required upon award of the Franchise Agreement, which shall be obtained and paid for by the successful vendor (if not already so licensed).

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5 PROPOSAL PREPARATION INSTRUCTIONS

5.1 Receipt of Proposals

The City will accept written and sealed proposals to furnish all labor, equipment, materials, tools, insurance, supervision, and all other items incidental thereto, and to perform all work necessary and specified in the prescribed manner and time to provide Collection Services in the City Service Area in accordance with the terms and conditions set forth in the Franchise Agreement. **Five (5) hard copies and one (1) reproducible sealed proposals will be accepted until 4:00 p.m. PT on April 6, 2020 at the office listed below.**

Each proposal and supporting documentation must be submitted in a sealed envelope or container plainly labeled in the lower-left corner: "PROPOSAL FOR RESIDENTIAL AND COMMERCIAL GARBAGE, RECYCLABLE MATERIAL AND ORGANIC WASTE COLLECTION SERVICES" along with the proposal submission date. Proposers must also include their company name and address on the outside of the envelope or container. Proposals must be delivered to:

**City of Los Banos
Attention: Lucille L. Mallonee
The City of Los Banos City Clerk
520 J Street
Los Banos, CA 93635**

Proposers are responsible for making certain that proposals and addenda or written modifications are delivered to the City at the above address. Mailing of a proposal or receipts of postal or other delivery agents does not ensure that the proposal will be delivered on time or delivered at all.

Proposals will be accepted in person, by United States Mail, or by private courier service. Postmarks will not be accepted in lieu of this requirement. No proposals will be accepted by oral communication, telephone, fax, or e-mail. Proposals may be withdrawn prior to the above scheduled time set for receipt of proposals. No Proposer may withdraw a proposal after the above scheduled time for opening the proposals. Any proposal received after the date and hour specified will be rejected and returned unopened to the Proposer.

The City reserves the right to postpone the date and time for opening proposals through an addendum.

5.2 General Provisions

All prices and proposals must be in ink or typewritten. No pencil figures or erasures are permitted. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by person signing the proposal. All proposals must be signed in ink with the firm's name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

5.3 Pre-Proposal Video Conference

A **MANDATORY PRE-PROPOSAL VIDEO CONFERENCE** will be held on April 13, 2020 at 2:00 p.m. PT, via Zoom. Proposers must provide a completed Form A – Communication Protocol three (3) days prior to mandatory pre-proposal video conference. The invitation to the mandatory pre-proposal video conference will be sent to the Proposers once Form A has been received by the City Clerk.

Failure to attend the mandatory pre-proposal video conference shall render a proposal submitted by a non-attendee to be deemed non-responsive, and the proposal from the non-attendee shall not be

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considered for award. Failure to do so will result in any response submitted by that Proposer to be deemed non-responsive and their proposal shall not be considered for award. Decisions on these matters by the City shall be final.

At the pre-proposal video conference, representatives of the City will be available to answer questions and explain the intent of this RFP. To the extent possible, the City will answer questions or concerns that may be raised at that time. After the pre-proposal video conference, the City will prepare written documentation to answer questions which were addressed at the pre-proposal video conference which relate to interpretation of, or changes to, the RFP documents which the City deems appropriate for clarification. The documentation will be divided into two (2) areas:

- Items which only require clarification, interpretation, or explanation; and,
- Items which require an addition, deletion, or change to the proposal documents. (Answers to items in this category will be accompanied by the appropriate amended portion of the RFP document.)

Proposers are again cautioned that only interpretations of, or changes to, the RFP documents received from the City in writing may be relied upon. **Each proposer must execute and return to the City with its proposal acknowledgments of its receipt of each addendum.**

After the pre-proposal video conference, written questions submitted by Proposers that attended the pre-proposal video conference and received by the City no later than 4:00 p.m. PT on April 22, 2020, will be responded to in writing by the City. The City will post all questions and the City's responses on the website dedicated to this RFP.

5.4 Preparation of Proposals

Six (6) sets of the proposals (one (1) single-sided original proposal and five (5) double-sided copies), all placed in Binders with a cover indicating the Proposer name and proposal title and number must be submitted. Proposers shall also provide a digital copy of the complete proposal, in a single PDF file on a USB drive. Additional copies may be requested by the City at its discretion. All blank spaces must be filled in and noted, in **blue ink or typed**, with amounts extended and totaled as appropriate.

All required original signatures must be in **blue ink**. All corrections made by the Proposer to any part of the RFP document must be initialed in **blue ink**.

Only one (1) proposal from any individual, firm, partnership, or corporation under the same or different names will be considered.

Proposals by corporations must be executed in the corporate name by two (2) corporate officers. The original RFP submitted must be signed as an original. One signature must be from the chairman, president, or vice-president, and the other signature must be from the chief financial officer, assistant treasurer, secretary, or assistant secretary. The corporate address and state of incorporation must be shown below the signature.

Proposals by partnerships must be executed in the partnership name and signed by a partner. His/her title must appear under his/her signature, and the official address of the partnership must be shown below the signature.

Proposals by limited liability companies must be executed in the company's name and signed by a managing member.

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No Proposer shall take exception to the specifications herein. Proposals taking exception to the specifications may be rejected as non-responsive.

5.5 Proposal Content

In order to expedite the evaluation process, each proposal shall be organized in accordance with this Section as outlined in Table 6. Instructions for preparing each section of the proposal shown in the outline are given in the following subsections. Proposals that do not follow the specified format outlined below, or fail to provide the required documentation, may receive lower scores during the evaluation process. In the event of any conflict between any of the proposal documents, resolution thereof shall be in the City's sole discretion.

The Proposers shall provide the information as requested and as applicable to the proposed services. Headings and section numbering utilized in the proposal shall be the same as those identified in Table 6. Proposals shall include the following information in the format indicated.

SECTION	TABLE 6 OUTLINE FOR PROPOSAL
1	COVER LETTER
	EXECUTIVE SUMMARY
	PROPOSAL BOND
	PERFORMANCE BOND COMMITMENT LETTER
	SIGNED COPIES OF ADDENDA
	TABLE OF CONTENTS
	EXECUTIVE SUMMARY
2	QUALIFICATIONS
3	STATEMENT OF FINANCIAL QUALIFICATIONS
4	TECHNICAL PROPOSAL
5	FORMS
6	SERVICE EXCEPTIONS/ALTERNATIVES (if applicable)
7	APPENDIX

5.5.1 Cover Letter, Executive Summary, Proposal Bond, Performance Bond Commitment Letter, Signed Copies of Addenda, Table of Contents

All proposals must be accompanied by a cover letter not exceeding the equivalent of four (4) pages and should provide as follows:

- Name, address, telephone number, fax number, and email address of applicant's key contact person.

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- Description of the type of organization (e.g. corporation, partnership, limited liability company, including joint venture teams and subcontractors) submitting proposals.
- Name of the entity that will sign the Franchise Agreement, in the event one is awarded.
- A written statement certifying that Proposer has examined, understood, and agreed to the Franchise Agreement.
- A written statement warranting that the requirements of the Draft Franchise Agreement as described in this RFP document, its enclosures, and all addenda, by listing all addenda and dates received, have been thoroughly reviewed and the Proposer has conducted all due diligence necessary to confirm material facts upon which the proposal is based.
- A written statement acknowledging that if the City awards the Collection Service to the Proposer, that the Proposer shall pay the City the Proposal Development Fee up to but not exceeding \$150,000 for the cost of this procurement. This one-time payment is due within thirty (30) days after the Franchise Agreement is executed.
- A written statement acknowledging that the Proposer will not receive any additional compensation that is not included in the Proposer's Rate Proposal Forms.
- A written statement acknowledging the validity of the proposal contents including proposed Service Rates and pricing for a period of one hundred eighty (180) days.
- A written statement acknowledging that the Proposer will enter into the Franchise Agreement with the City if selected as the City's Collection Service provider.

The following items should be appended to the cover letter:

- Executive Summary – Not to exceed six (6) pages. Must highlight the major elements of the Proposer's qualifications and proposal, including a brief description of the Proposer's initial transition plan and schedule, and facilities to be used. All information should be provided in a concise manner.
- Proposal Bond;
- Performance Bond Commitment Letter;
- Signed Copies of Addenda acknowledging receipt; and
- Table of Contents.

5.5.2 Qualifications

Key Staff Persons (including Proposer's Service Supervisor and Collection Service Manager assigned to the City). Proposers must identify each person and provide resumes for key staff proposed for the service identified herein. Of key importance to the City is demonstrated experience in providing residential and commercial collection services, and knowledge of collection containers and automated collection vehicles. Additionally, Proposers must demonstrate experience and ability to work closely with the current hauler and City staff during the transition period, and on an ongoing basis with City staff during the duration of the Franchise Agreement.

Staff Responsibilities. Proposers must provide names and resumes of principal officers, partners, or other officials or managers who will be performing substantive responsibilities required under the Franchise Agreement. Proposers must describe relevant technical experience of key personnel, their background in Garbage, Recyclable Material, and Organic Waste collection/processing.

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References. Proposers must provide a minimum of four (4) clients that the City may contact to conduct a reference check. The Proposer must be providing or have provided similar services as requested herein to these references the within the last three (3) years.

Conflict of Interest Statement. Proposers must warrant that no gratuities have been or will be offered or given by Proposer, or any agent or representative of the Proposer, to any officer or employee of the City or any participant in the selection of a Proposer to furnish the services described herein in order to secure a favorable treatment regarding the evaluation, scoring, and Franchise Agreement award process.

Litigation and Notice of Violation History. For all Litigation and Notice of Violation History, Proposer may limit disclosures to the following central California counties: Stanislaus, Tuolumne, Mariposa, Madera, Fresno, San Benito, Santa Clara, and Merced. The Proposer must provide a history for the last five (5) years of all claim settlements, arbitrations, litigation proceedings, and civil actions involving One Hundred Thousand Dollars (\$100,000) or more, and all criminal actions in which the company, its parent company, subsidiaries, all partners, or principals were involved. For each case, the Proposer must provide the following:

- The name of the claim, arbitration, litigation or action;
- The amount at issue or the criminal charges alleged; and
- The resolution of the case.

The Proposer must also provide details of any current or threatened legal actions in California against the Proposer or its parent company, subsidiaries, all partners, principals, or joint venture company(ies) by a governmental entity contracting with the Proposer or its parent company for services relating to solid waste management, or against such a government entity by the Proposer or its parent company or joint venture company(ies). For each action, the Proposer must provide the following:

- The name of the action;
- The court in which the action is pending;
- The action number; and
- The amount at issue.

The Proposer shall provide a list of all Notice of Violations and/or enforcement actions taken against it during the last five (5) years by any regulatory agency such as, but not limited to, the United States Environmental Protection Agency, Air Quality Management District, a Local Enforcement Agency under the California Integrated Waste Management Act, or Cal/OSHA. The list shall include the name of the regulatory agency and the date of the enforcement action and a copy of any Notice of Violation.

The Proposer shall inform the City if it has had a permit, franchise, license, entitlements or business licenses that have been revoked or suspended in the last five (5) years.

The Proposer must list any liquidated damages, administrative fines, charges, or assessments that total Fifty Thousand Dollars (\$50,000) or greater in any one (1) calendar year during the last five (5) years that have been paid by the Proposer to a public agency as a result of solid waste management services provided by Proposer. The list shall include the name of the public agency, the date and amount of the liquidated damages, administrative fines, charges, or assessments, and the reason the public agency assessed the liquidated damages, administrative fines, charges, or assessments.

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The Proposer must list any claims against a bid, proposal, or performance bond and the results and failure to receive a bid, proposal, or performance bond, or any contractual defaults or termination in the last fifteen (15) years.

5.5.3 Financial Qualifications

The Proposer must provide a written statement of its financial qualifications to perform the work described in this RFP. The statement must thoroughly describe and provide documentation of the Proposer's ability to secure financing for all trucks, facilities, other equipment and labor required to perform all services described in this RFP, as must include the total estimated amount of expense and financing that is expected to be incurred and utilized in performing the work.

This statement must be accompanied by a letter from Proposer's bank/financial institution clearly stating that the Proposer has adequate assets and/or irrevocable line of credit that is sufficient to compensate for all required payments to the City, capital costs, equipment costs, start-up costs, and a minimum of three (3) months' operating costs.

The Proposer must provide copies of audited financial statements for the entity that is proposed to sign the Franchise Agreement, for the most recent three (3) fiscal years. Audited financial statements should include: balance sheet, income statement, statement of changes, footnotes, and subsidiary schedules.

In the event that a Proposer does not have audited financial statements, three years of business tax returns, with supporting schedules, may be provided. However, tax returns are not an alternative to providing audited financial statements; if the Proposer has audited financial statements, those must be provided.

The City reserves the right to require submission by Proposer, at no cost to the City, an opinion by a Certified Public Accountant with regard to the financial status of such Proposer, including ownership of, or interest in, equipment and facilities prior to award of a Franchise Agreement.

As is set forth in this RFP, the City will make reasonable efforts, but makes no representation, that it will be able to maintain total confidentiality of Proposer's financial information. A Proposer that submits financial information that it asks to have treated as confidential should submit a statement justifying the request, reference it in the proposal and label it as a separate attachment, clearly identifying it as confidential. At all times, the City will comply with the provisions of the California Public Records Act.

5.5.4 Technical Proposal

Proposers are required to provide a description of the manner in which the requested services are to be provided. The work plans must address and include those items as specified below.

The City will place significant emphasis on Proposer's proposed work plans during the evaluation process. At a minimum, Proposers shall include the following work plans:

5.5.4.1 Transition Plan

Proposers shall provide a detailed Transition Plan that describes the plans and schedule of events for the provision of new services. The Transition Plan will be included as an exhibit to the final Franchise Agreement, when approved by the City. The Transition Plan must, at a minimum, address the following items:

- In concise terms, what the Proposer will accomplish prior to the start of Collection Services;
- How Service Recipients will select the size and number of Carts or Bins;

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- How the Proposer will retain the current franchisee's employees;
- How the Proposer will provide transition services;
- The specific types of education and outreach activities that will occur, including specific frequencies and amounts of education and outreach, by type of activities;
- How the transition will be coordinated with the current services, current hauler, and with the City (switching of containers, billing system, etc.); and
- Transition schedule and weekly timing plan to transition from the current collection system to the Proposer's collection system, for public education and outreach on new services, and for removal and replacement of Carts and Bins.

In developing the Transition Plan, Proposers should consider that the City strongly seeks to reduce disruption to Service Recipients during the transition period.

5.5.4.2 Operations Plan

Proposers shall provide a detailed Operations Plan that presents the specific collection and processing programs that will be implemented in the City. The Operations Plan will be separated into a Collection Service Operations Plan, and an HHW Collection Plan (the approved plans will be included as exhibits to the final Franchise Agreement). This must address items as listed above and also include:

A. VEHICLES

- A listing of the Proposer's collection equipment and all accessories by type, model, year of manufacture, and anticipated remaining useful life, as of the date of the inventory;
- As new collection vehicles are to be provided, delivery guarantees by manufacturers shall be included in the proposal for all new equipment to be provided to the City;
- Vehicle fuel type, size, number of axles, gross vehicle weight, maximum load capacity, turning diameter, number of collection compartments, for all collection vehicles (front loader, side load, rear load, single-body, split-body collection, regular compactor, small compactor, pup trucks, etc.);
- How Proposer's collection vehicles will reduce air emissions, and reduce wear and tear on the City's streets;
- How the Proposer will use technology, such as GPS, to track and monitor collection and identify the proposed technology brand to be used;
- The appearance of the vehicles including the color and information to appear on the outside of the vehicle;
- Vehicle maintenance program, including response/replacement/repair time for vehicles on route; and
- The scheduled maintenance and cleaning of the vehicles.

B. CONTAINERS

- Containers to be used;
- Past experience of other collection programs with this type of container;

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- The sufficiency of the containers' capacity based on the requirements of the Collection Services;
- The suitability of containers to be used in areas that have may have limited space, or are in Bin enclosures;
- Ease of cleaning and the appearance of the containers including their colors and information to be imprinted on the containers; and
- Container maintenance program, including response/replacement/repair time for containers.

C. ROUTE OPERATIONS

- The number of vehicles required for the collection programs, and the number of routes to be performed by each service line and material type collected;
- The number of containers collected per hour by service line and material type collected;
- Total number of route hours (8 or 10 hours/day, and the total hours on-route by service line and material type collected;
- The number of vehicle passes per Service Recipient;
- Number of crew members required per vehicle and their responsibilities;
- The advantages and disadvantages of the type of vehicle chosen (particularly with regard to noise, emissions, and the impact on the City's roads);
- How drivers and dispatch will communicate while on route to resolve customer service requests/complaints;
- Methods used by drivers to monitor contamination and how this will be communicated to Service Recipients;
- The material type each vehicle will collect; and
- Approach to conducting annual route audits to verify the service levels and Service Recipient billing is 100% correct.

D. FACILITIES

- The name and owner of the facilities to be used for transfer, Recyclable Material and Organic Waste processing, corporation/maintenance yard, customer service, etc., their location and distance from the center of City;
- Recovery rates for the Recyclable Material and the Organic Waste processing facilities, net of residual.
- Operating limitations of the Recyclable Material and Organic Waste Processing Facilities (i.e., contamination/residual, material types accepted, hours, etc.);
- How Recyclable Materials and Organic Waste will be marketed and sold, contingencies for changes in markets, and the average dollar/ton received for the sale of Recyclable Material; and
- The permitted capacity of each facility and the ability to accommodate the City's operations over the term.

E. SAFETY

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- Staffing safety requirements, including physical, drug, and alcohol testing requirements;
- Hazardous Waste, including E-Waste and U-Waste, management protocols; and
- Health and safety management procedures.

F. REPORTING

- Detailed AB 341, AB 939, AB 1594, AB 1826, and SB 1383 monitoring and reporting, including electronic transmission of reports to City;
- Method used to track tonnage collected, disposed, processed, and residue disposed; and
- Process for reporting Service Recipient complaints and dispute resolution to the City.

5.5.4.3 Customer Service Plan

Proposers shall provide a detailed Customer Service Plan that specifies the customer service operations that will be used in the City. The Customer Service Plan will be included as an exhibit to the final Franchise Agreement, when approved by the City. Customer service hours should be noted. The Customer Service Plan must include the following:

- Protocol for receiving customer calls, issuing work orders, closing work orders, and call backs to Service Recipients;
- Protocol for Service Recipient billing, billing changes, and billing disputes;
- Whether or not a new phone system and/or new website will be included;
- Staffing levels to ensure excellent customer service and limited wait times (state the number of customers per Customer Service Representative); and
- Payment programs and options providing alternatives for Service Recipients to pay.

5.5.4.4 Diversion Plan

Proposers are required to provide a description of the diversion and sustainability programs associated with providing the requested services. This may include, without limitation, the Proposer's approach in obtaining the diversion goals specified in this RFP. Proposers must provide diversion estimates, which must not be less than the minimum diversion required in this RFP, and must be tied to specific collection methods and public education programs. Failure to provide the estimated diversion tonnages and diversion estimates will be grounds for disqualification. The Diversion Plan will be included as an exhibit to the final Franchise Agreement, when approved by the City. The Diversion Plan must, at a minimum, include the following:

- Proposer's approach to meeting the City's diversion requirements, as well as CalRecycle's fifty percent (50%) diversion requirement, and assisting the City with meeting CalRecycle's seventy-five percent (75%) diversion goal by June 31, 2031. This must be done by specific diversion programs by program type (SFD, MFD, Commercial, Recyclable Material, Organic Waste, Bulky Waste, etc.);
- Diversion facilities to be used (including name, location, owner/operator, permit status, and permitted capacity);
- A schedule showing specific programs and tasks, milestones, and time frames for meeting the diversion requirements, as specified in this RFP; and

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- A table segregated by SFD, MFD, Commercial, and Additional Services that estimates tonnages for Recyclable Material and Organic Waste delivered and processed, and the estimated residual tonnages for each calendar year of the Franchise Agreement beginning with calendar year 2021;
- Proposer's approach to reducing contamination of Recyclable Materials and Organic Waste;
- Proposer's approach to reducing air emissions, and wear and tear on the City's streets;
- Environmental Stewardship (all environmental management policies and activities related to the proposed activities should be described, including the use of alternative fuel vehicles, use of recycled products throughout operations, internal waste reduction and reuse protocol, water and resource conservation activities within facilities (design, construction and operation), compliance with laws governing E-Waste, HHW, and U-Waste, and use of non-toxic products when possible);
- Use of local vendors; and
- Innovative "green" approach to providing services.

5.5.4.5 Education and Outreach Plan

Proposers shall provide a detailed Education and Outreach Plan that specifies the methods and public education materials that will be used for program start-up, and throughout the Franchise Agreement term for the City. Specific attention should be given to methods to achieve high participation and diversion through Recycling and Organics Collection programs, City-Supported Events, and on-going "how to" promotions. The Education and Outreach Plan will be included as an exhibit to the final Franchise Agreement, when approved by the City. Specifically, Proposers must address all items as discussed in Section 3.5.6 of this RFP, as well as the following:

- Implementing aggressive public education programs, especially with MFD and commercial solid waste generators, to meet the City's diversion requirements;
- Methods to reduce contamination of Recyclable Material and Organic Waste;
- Educating Service Recipients on the benefits of participation in Recycling and Organics Collection programs; and
- Implementing public education and outreach programs in the City's schools, business community, City facilities, and special events.

5.5.5 Forms

Proposers must provide a copy of Form A, and Proposers must complete Forms B-I of Section 7, in the order they are listed in Section 7 with their proposals. Proposers shall use only the forms and format provided. Any deviation from those provided may be grounds for rejection of the entire proposal.

Proposers shall submit multiple copies of a form if appropriate. For example, if a Proposer is proposing more than one potential Organic Waste Processing Facility, the Proposer must complete one set of Service Recipient rate forms for each Organic Waste Processing Facility proposed.

Proposers must provide their proposed Service Rates. Proposers shall use only the forms and format provided. Any deviation from those provided may be grounds for rejection of the entire proposal. ***Proposed rates must include recycling and organics programs that are fully compliant with the draft SB 1383 regulations, and all requirements under AB 1594, AB 341, SB 1826, and any other existing applicable regulations.***

5.5.6 Proposal Service Alternatives and Agreement Exceptions

Proposers may submit alternatives to the services listed in this RFP, or exceptions to the Franchise Agreement language. **However, Proposers must propose on all required services as included in this RFP or their proposal will be rejected as being non-responsive.** If service alternatives or Franchise Agreement exceptions are presented, as provided for in this section of the RFP, they must be included as an attachment to the proposal and must contain the price of the service alternatives using the forms provided in Section 7 of this RFP, and must include specific language necessary for inclusion in the Franchise Agreement.

Each Franchise Agreement exception must be presented by stating: The specific exception, the page and line numbers of the exception, the suggested changes to the program related to the exception, the suggested changes in the Franchise Agreement language related to the exception, the manner in which the proposed change would benefit the City, the Service Recipients or both.

Please note that the City has no obligation to accept any proposed service alternative or Franchise Agreement exception. Proposals will be evaluated based on the required services and Agreement language as set forth in this RFP.

5.5.7 Appendix

Proposers may provide any additional technical information (i.e. only information specifically related to equipment of services to be provided) that they believe to be applicable to this proposal and include such information as an appendix. Proposers are discouraged to include marketing material, education and outreach material or other additional information not related to the equipment or services to be provided.

5.6 Evaluation of Proposals

Those proposals that have passed the initial “Pass/Fail” review described below will be evaluated and scored by the Evaluation Team, which may consist of City staff members, consultants and City Council members, based on the following evaluation criteria:

- Qualifications
- Technical Approach
- Sustainability
- Service Rates

The results of the evaluation process will be presented to the City Council for direction by City Council on the next steps following the evaluation and negotiation process. In determining and evaluating the best proposal, the prices will not necessarily be controlling, but quality, equality, efficiency, utility, general terms, delivery, suitability of the service offered, and the reputation of the service in general use will also be considered, with any other relevant factors.

The following subsections provide a brief discussion of each of the evaluation criteria listed above.

5.6.1 Pass/Fail Review

A panel of City staff members and such other parties as the City deems necessary, will conduct an initial “Pass/Fail” review of all proposals submitted to check for completeness and compliance with the proposal requirements. Proposals that have been determined to be complete and in compliance with the proposal requirements will undergo further evaluation. Proposals that are not complete or are not in compliance

with the submittal requirements may be disqualified from further evaluation and will be returned to the Proposer.

5.6.2 Qualifications

5.6.2.1 General Qualifications

The experience, past practices and prior performance of each Proposer will be evaluated to determine the relative ability of each Proposer to implement the program elements described in this RFP and to attain the City objectives for solid waste management. Qualifications, evaluation criteria and areas of experience to be considered will include without limitation:

- Qualifications and structure of project management team, relationships between management team and corporate management, and internal controls;
- Previous experience, past practice and prior performance providing services to jurisdictions of similar size;
- Successful prior operation of residential and commercial solid waste programs;
- Implementation and administration of complex solid waste collection systems, including equipment selection and route design;
- Successful operation of Recyclable Material and Organics programs that achieve high participation levels and diversion rates;
- Cost-effective processing and marketing of Recyclable Material and Organic Waste with demonstrated success in attaining highest and best uses for such materials (if applicable);
- Demonstrated expertise in implementing and maintaining customer service programs, including the development and use of performance measures and benchmarking;
- Previous experience, past practice and prior performance in successfully designing and implementing transition plans, relevant to this RFP;
- Experience in designing, implementing, and operating public education and information programs that promote high participation and diversion;
- Demonstrated expertise in designing and using data management systems to assure accurate data collection, analysis and reporting;
- References whom the City may contact regarding past practices and prior performance; and
- Litigation history.

5.6.2.2 Financial Qualifications

Each proposal will be also evaluated to assess the relative financial capacity and strength of the Proposer. This will include without limitation:

- An evaluation of financial statements;
- A financial review of each Proposer, including a review of key financial indicators, outstanding debt and debt coverage ratios, ability to finance capital purchases and needed start-up investments in equipment; and
- Proposer's capacity and plans for responding to fluctuations in the value of recyclable material markets.

5.6.3 Technical Approach

The purpose of the technical review is to evaluate how the Proposer can meet the proposed performance specifications and criteria on a long-term basis, as well as transition. The technical evaluation will include without limitation:

- Proposer's overall collection approach (automated collection, split-body collection vehicles, diversion facilities to be used, types of containers to be used, etc.);
- Proposer's approach to transition that minimizes disruption to the community and Proposer's implementation schedule;
- Review of the Proposer's processing facility(ies) for Recyclable Material and Organic Waste. Proposers will be disqualified for offering a processing facility(ies) that is not fully permitted and/or is not capable of handling the volume and types of materials generated by the City during the term of the Franchise Agreement, taking into consideration any existing obligations on the part of the facility(ies). Processing facilities must have appropriate permits from all applicable regulatory entities (including but not limited to CalRecycle and the Local Enforcement Agency) in place at all times;
- The location of proposed disposal and processing facilities, and effect of material transportation distances on greenhouse gas (GHG) emissions;
- Proposer's approach to providing a high quality and customized customer service program;
- Proposer's data management system for tracking customer service data, and providing accurate reports to the City;
- Commitment to employee and public safety; and
- Proposer's approach to provide City with annual updates on new innovations to consider.

5.6.4 Sustainability

5.6.4.1 **Diversion Programs**

Each proposal will be evaluated based on their approach to providing innovative, high quality and effective processing and marketing of Recyclable Material (and Organic Waste if appropriate), reducing greenhouse gas emissions, meeting or exceeding diversion requirements, and Proposer's internal sustainability practices.

5.6.4.2 **Education and Outreach Program**

Each proposal will be evaluated based on the Proposer's approach to provide effective and innovate strategies to delivering Education and Outreach materials to all Service Recipients that will results in higher awareness of and participation in all required services, promote achievement of diversion requirements, and reduce contamination of collected Organics and Recyclable Materials.

5.6.5 Service Rates

The Service Rate evaluation is intended to provide an equitable basis for comparison between proposals and an evaluation of the effect of programs on Service Rates. Only Service Rate information as submitted by Proposers will be used in this evaluation. The proposals will be reviewed to verify that the proposed Service Rates are consistent with the activities described in the proposal and the Proposer's work plans, and as part of the evaluation the City may require that Proposers provide detailed assumptions made in

City of Los Banos Request for Proposals for Residential and Commercial Garbage, Recyclable
Material and Organic Waste Collection Services

developing their Service Rates. Proposed Service Rates, including rates for optional services, will be compared by services. Note, however, that Service Rates for alternatives as provided for in Section 5.5.6 of this RFP will not be included as part of the Service Recipient Rate evaluation.

Please note the following:

- Throughout the term of the Franchise Agreement, the selected Contractor may not charge for any service not explicitly included in the final Service Rates;
- Throughout the term of the Franchise Agreement, the selected Contractor will not receive any revenue that is not based on approved services as allowable to bill using the schedule of Service Rates;
- Throughout the term of the Franchise Agreement, the only adjustment to Service Rates will be as provided for via annual rate adjustments or detailed rate reviews (methodology provided in the Draft Franchise Agreement); and
- The Contractor may be eligible for one Detailed Rate Review no earlier than Year 3 of the Franchise Agreement term; however, this review will only be conducted in the event that Contractor can demonstrate: (1) a 10% change in the total number of Service Recipients as compared to the information provided in this RFP; or (2) significant migration between service levels affecting more than 10% of Service Recipients. This Detailed Rate Review may only be conducted if the Contractor has met all performance and diversion requirements of the Franchise Agreement, and Contractor will be responsible for the full cost of the Detailed Rate Review.

With the exception of the Detailed Rate Review described above, there will be no “true-up” of Contractor’s revenue or of Service Rates, or increases in Service Rates if the information contained in this RFP is not accurate, or if there are changes in the types or level of service subscribed to by Service Recipients (i.e., account migration).

6 PASS/FAIL SUBMISSION CHECKLIST

THE FOLLOWING DOCUMENTS MUST BE SUBMITTED TO COMPRISE A COMPLETE PROPOSAL

_____ Proposal Cover Letter (signed)

_____ Proposal Bond

_____ Performance Bond Commitment Letter

_____ Addendum(s) (signed)

_____ Table of Contents

_____ Executive Summary

_____ Qualifications

_____ Statement of Financial Qualifications

_____ Technical Proposal

_____ Forms (See Section 7) including an electronic copy of the Proposed Customer Rate
Form (Form I)

_____ Service Exceptions/Alternatives (if applicable)

_____ Appendix (if applicable)

7 PROPOSAL FORMS

Proposers that attended the Mandatory Pre-Proposal Video Conference must submit their original signed Form A as part of their proposal. Additionally, Proposers must complete and submit Forms B-I on the following pages as part of their proposal. Failure to complete and submit the required Forms may result in disqualification from this RFP process.

- Form A COMMUNICATION PROTOCOL
- Form B PROPOSER'S STATEMENT OF ORGANIZATION
- Form C CERTIFICATION OF NON-GRATUITIES
- Form D CONTAINER SPECIFICATIONS
- Form E VEHICLE SPECIFICATIONS
- Form F NON-COLLUSION AFFIDAVIT OF PROPOSER
- Form G SERVICE RECIPIENT RATE PROPOSAL SUMMARY AND SIGNATURE
- Form H PASS/FAIL REQUIREMENTS
- Form I SERVICE RATES

**COLLECTION SERVICES AGREEMENT
AND FRANCHISE FOR THE PROVISION OF
RESIDENTIAL AND COMMERCIAL GARBAGE,
RECYCLABLE MATERIALS AND ORGANIC WASTE
COLLECTION SERVICES**

**Executed By and Between the
City of Los Banos and
_____ (CONTRACTOR)**

Approval Date: _____, 2020 (ENTER DATE)

Effective Date: July 1, 2021

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This Collection Services Agreement and Franchise for the Provision of Residential and Commercial Solid Waste, Recyclable Materials and Organics Collection Services ("Agreement") in entered into this _____ (DAY) of _____ (MONTH), 2020 by and between the City of Los Banos a general law city and municipal corporation in the State of California, ("CITY") and _____, ("CONTRACTOR") on the terms and conditions set forth herein. CITY and CONTRACTOR may be referred to herein individually as a "Party" or collectively as the "Parties". Capitalized terms not otherwise defined shall have those definitions as hereinafter set forth in ARTICLE 1, "Definitions".

RECITALS

A. Article XI, § 7 of the California Constitution authorizes cities to protect public health and safety by taking measures in furtherance of their authority over police and sanitary matters; and

B. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, ("**AB 939**" or the "**Act**") (codified at Public Resources Code §§ 4000 *et seq.*) established a solid waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse and recycling as integrated waste management practices for solid waste attributed to sources within their respective jurisdictions; and

C. The Act provides that aspects of solid waste handling of local concern include but are not limited to frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste services; and

D. The Act confers discretion on cities to provide for the delivery of refuse services to its residents by the CITY itself providing the services or by the CITY conferring the authority to do so on private profit-making entities; and when cities confer the authority to provide refuse services on private profit-making entities cities are authorized to do so by means which include the award of a nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise; and

E. The City Council has determined, in the exercise of its legislative discretion, that it is in the best interests of the CITY and its residents for the CITY to franchise comprehensive refuse services to a private enterprise with the special skills, knowledge, facilities and other capabilities to ensure a high level of service and compliance with the existing statutory and regulatory requirements; and

F. The City Council during its regular meeting of _____, 2020 (DATE) approved the award of an exclusive franchise agreement for comprehensive refuse services with CONTRACTOR because the City Council determined, in the exercise of its legislative discretion, that CONTRACTOR would provide high quality services to Service Recipients; and

G. CITY and CONTRACTOR are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of residential and commercial Solid Waste, including AB 939, the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. §§ 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. §§ 9601 *et. seq.*; the Electronic Waste Recycling Act of 2003 (SB 20, Sher, Chapter 526, Statutes of 2003; SB 50, Sher, Chapter

863, Statutes of 2004; AB 575, Wolke, Chapter 59, Statutes of 2011), laws governing Universal Waste, including, but not limited to, Universal Waste Electronics Devices ("**UWED**"), non-empty aerosol cans, fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and any other lamp exhibiting a characteristic of a hazardous waste, batteries (rechargeable nickel-cadmium batteries, silver button batteries, mercury batteries, small sealed lead acid batteries [burglar alarm and emergency light batteries], alkaline batteries, carbon-zinc batteries and any other batteries which exhibit the characteristic of a hazardous waste), mercury thermometers, mercury-containing switches; and

H. CITY and CONTRACTOR desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, CITY is not thereby becoming a "generator" or an "arranger" as those terms are used in the context of CERCLA § 107(a)(3) and that it is CONTRACTOR, an independent entity, not CITY, which will arrange to collect Solid Waste from Single-Family Dwelling (SFD), Multi-Family Dwelling (MFD), CITY and Commercial Service Units in the City of Los Banos, transport for recycling and disposal and dispose of Solid Wastes which may contain small amounts of household products with the characteristics of hazardous wastes, collect and compost Organic Waste and collect and recycle Recyclable Materials from SFD, MFD, CITY, and Commercial Service Units in the City of Los Banos, and collect and recycle or dispose of Construction and Demolition Materials; and

I. CITY and CONTRACTOR agree that it is CONTRACTOR, and not CITY, which will select the landfill or transformation facility destination of the non-recyclable residential and commercial Solid Waste and Construction and Demolition Materials which Contractor will arrange to collect; that CITY has not, and by this Agreement does not, instruct CONTRACTOR on its collection methods, nor supervise CONTRACTOR in the collection of waste; and nothing in this Agreement or other action of the CITY shall be construed to give rise to any inference that the CITY has any title, ownership or right of possession of such Solid Waste; and

J. CONTRACTOR represents and warrants to CITY that CONTRACTOR has the experience and qualifications to conduct recycling and waste diversion programs; to provide CITY with information sufficient to meet the CITY's reporting requirements to CalRecycle and other agencies under the Act; to meet CITY's other requirements under the Act; to arrange with persons in charge of day-to-day activities of Service Units in the City of Los Banos for the collection, safe transport and disposal of Solid Wastes, which may contain small amounts of household products with the characteristics of Hazardous Wastes, in a safe manner which shall minimize the adverse effects of collection vehicles on air quality and traffic; and that CONTRACTOR has the ability to indemnify CITY in accordance with this Agreement; and

K. The City Council of the City of Los Banos determines and finds pursuant to California Public Resources Code § 40059(a)(1) that the public interest, health, safety and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles; the implementation of measures consistent with the City's Source Reduction and Recycling Component; and in an effort to reduce the CITY's potential CERCLA liability, would be served if CONTRACTOR were to be awarded an exclusive Franchise for collection, recycling, diversion and disposal of Solid Waste from Service Units in the City of Los Banos; and

L. The Parties agree that solid waste collection services shall be provided by CONTRACTOR beginning at 12:00 a.m. July 1, 2021 ("Effective Date") at which time the Parties agree that this Agreement shall be controlling.

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OPERATIVE PROVISIONS

Now, therefore, in consideration of the mutual covenants, agreements and other good and valuable consideration contained in this Agreement, the receipt of which is hereby acknowledged, CITY and CONTRACTOR agree as follows:

ARTICLE 1. Definitions

For the purpose of this Agreement, the definitions contained in this Article apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender includes the feminine gender. The meaning of terms or words not defined in this Article will be as commonly understood in the solid waste collection services industry when the common understanding is uncertain.

1.01 AB 341. State of California Assembly Bill No. 341 approved October 5, 2011. AB 341 requires businesses, defined to include commercial or public entities that generate more than 4 cubic yards of commercial solid waste per week, or multifamily residential dwellings of 5 units or more, to arrange for recycling services, on and after July 1, 2012. AB 341 further requires jurisdictions, on and after July 1, 2012, to implement a commercial solid waste recycling program.

1.02 AB 939. State of California Assembly Bill No. 939 approved September 29, 1989 enacting the California Integrated Waste Management Act of 1989, codified in part at Public Resources Code §§ 40000 and following, as it may be amended and as implemented by the regulations of the California Department of Resources Recycling and Recovery (CalRecycle), or its successor agency.

1.03 AB 1594. State of California Assembly Bill No. 1594 approved September 28, 2014. AB 1594 provides that the use of green material as Alternative Daily Cover does not constitute diversion through recycling and would be considered disposal.

1.04 AB 1826. State of California Assembly Bill No. 1826 approved September 28, 2014. AB 1826 requires each jurisdiction, on and after January 1, 2016, to implement an organic waste recycling program to divert organic waste from businesses. Each business meeting specific organic waste or solid waste generation thresholds phased in from April 1, 2016 to January 1, 2020 is required to arrange for organic waste recycling services.

1.05 Act. Act means the Integrated Waste Management Act of 1989, as amended (California Public Resources Code section 40000 *et. seq.*).

1.06 Agreement. This written document and all amendments, between CITY and CONTRACTOR, governing the provision of Collection Services.

1.07 Agreement Administrator. The City Manager, or his or her designee, designated to administer and monitor the provisions of this Agreement.

Attachment A
Collection Services Agreement

DRAFT: April 1, 2020

1.08 Agreement Year. Agreement year means each twelve (12) month period from July 1st to June 31st of the following calendar year during the term of this Agreement.

1.09 Annual Diversion Report. The annual report submitted by CONTRACTOR to the CITY describing the previous Calendar Year's diversion activities, diversion percentages and associated calculations and the description of the diversion activity planned for the upcoming year, if applicable.

1.10 Appendix. Appendix means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof.

1.11 Applicable Law. All Federal, State, county, and local laws, regulations, rules, orders, judgments, decrees, rulings, permits, approvals, or other requirement of any governmental entity or regulatory or quasi-regulatory authority having jurisdiction over an aspect of the Collection Services, including judicial interpretations thereof, that are in force on the Effective Date including without limitation AB 341, AB 939, AB 1594, AB 1826 and SB 1383, and as may be enacted, issued or amended thereafter, until termination or expiration of this Agreement.

1.12 Best Management Practice. Best Management Practice means the collection of written activities, practices, policies and procedures prepared and proposed by a responsible party, and then approved by the Agreement Administrator, to prevent or reduce, to the maximum extent that is technologically and economically feasible, the discharge of pollutants to the storm drain system which might be generated from any site in the CITY.

1.13 Bins. A metal or plastic container, with a capacity of approximately one (1) cubic yard up to and including eight (8) cubic yards, designed or intended to be mechanically dumped into a loader packer type truck, that is approved for Collection Services by CITY. Bins may also include Compactors that are owned by Commercial Service Units by which the Commercial Collection Service occurs. The specifications for CONTRACTOR-provided Bins are set forth in **Exhibit 4**.

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

1.15 Brown Goods. Electronic equipment such as stereos, televisions, computers, VCR's and other similar items collected from SFD Service Units.

1.16 Business. All retail, professional, wholesale and industrial facilities, and other commercial enterprises offering goods or services to the public.

1.17 Business Days. Any Monday through Friday, excluding any holidays as defined in Section 3.06.

1.18 Calendar Year. Each twelve (12) month period from January 1st to December 31st.

1.19 Carts. A heavy plastic receptacle with a rated capacity of at least thirty-two (32) and not more than one-hundred (100) gallons, having a hinged tight-fitting lid and wheels, that is approved by the Agreement Administrator for use by Service Recipients for Collection Services under this Agreement. The specifications for CONTRACTOR-provided Carts are set forth in **Exhibit 4**.

1.20 CEQA. CEQA means the California Environmental Quality Act, codified at Cal. Pub. Res. Code sections 21000 et seq. as amended or superseded, and the regulations promulgated thereunder and as set forth in the California Code of Regulations.

1.21 CERCLA. The Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. sections 9601 and following, as may be amended and regulations promulgated thereunder.

1.22 Change in Laws. Change in Laws means any of the following events or conditions which has a material and adverse effects on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management operation or maintenance of the operating assets or providing the franchise service or other matters to which Applicable Law applies:

(1) the enactment, adoption, promulgation, issuance, modification, or written change of or in Applicable Law, including but not limited to new or increased fees and charges imposed by the State of California or the U.S. Federal government directly related to the collection, handling, processing, recycling or disposal of Solid Waste, or the enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after Effective Date of any Applicable Law;

(2) the order or judgment of any Governmental Body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the CITY or of the CONTRACTOR, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) the denial of an application for, delay in the review, issuance or renewal of, suspension, termination, interruption or imposition of a new or more stringent condition in connection with the issuance, renewal or failure of issuance or renewal on or after the Effective Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure materially and adversely interferes with the performance of this Agreement, of and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the CITY or of the CONTRACTOR, whichever is asserting the occurrence of a Change of Law; provided, however, that the contesting in good faith or failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

1.23 CITY. The City of Los Banos, California.

1.24 City Collection Service. City Solid Waste Collection Service, City Organic Waste Collection Service, and City Recycling Service.

1.25 City Facility. City Facility(ies) means any building or other site owned, leased or used regularly and significantly (i.e., more than seventy-five percent (75%)) by employees or contractors of the CITY, and excludes those portions of such facilities used by others.

1.26 City Manager. City Manager means the City Manager of the City of Los Banos, or his or her designated representative, or any employee of the CITY who succeeds to the duties and responsibilities of the City Manager.

1.27 CITY's Waste Stream. Solid Waste generated within the CITY and collected by the CONTRACTOR in accordance with the terms and conditions of this Agreement.

1.28 Code. Code means the City of Los Banos Municipal Code.

1.29 Collection. The process whereby Residential, Commercial, and City Solid Waste are removed and transported to a Disposal Facility, Organic Waste Processing Facility or Materials Recycling Facility as appropriate.

1.30 Collection Services. SFD Collection Service, MFD Collection Service, Commercial Collection Service, City Collection Service, and Construction and Demolition Debris and Other Temporary Collection Service.

1.31 Commercial Collection Service. Commercial Solid Waste Collection Service, Commercial Organic Waste Collection Service, and Commercial Recycling Service. Commercial Collection Service shall also include Collection from MFD Service Units and City Service Units. Commercial Collection Service specifically includes the following:

- A. Commercial Garbage Collection Service. The Collection of Commercial Garbage by CONTRACTOR, from Commercial Service Units in the Service Area and the delivery of that Commercial Solid Waste to a Disposal Facility.
- B. Commercial Organic Waste Collection Service. The Collection of Organic Waste, by CONTRACTOR, from Commercial Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility and the processing and marketing of those Organic Waste materials, and the disposal of all Commercial Organic Waste Processing Residue.
- C. Commercial Recycling Collection Service. The Collection of Recyclable Materials, by CONTRACTOR, from Commercial Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all Commercial Recyclable Materials Processing Residue.

Attachment A
Collection Services Agreement

DRAFT: April 1, 2020

1.32 Compactor. Any Bin or Roll-Off Container which has a compaction mechanism, whether stationary or mobile.

1.33 CONTRACTOR. _____, the entity that has obtained from the CITY this Agreement to provide Collection Services.

1.34 CONTRACTOR Representative. The person, or designee, designated by the CONTRACTOR to manage the provisions of this Agreement.

1.35 Construction and Demolition Debris and Other Temporary Collection Service. Temporary Collection and processing of Construction and Demolition Debris and other Solid Waste, and which is placed in a Bin or Roll-Off Container.

1.36 County. Merced County, California.

1.37 Consumer Price Index (CPI). The index published by the U.S. Department of Labor, Bureau of Labor Statistics, (San Francisco – Oakland – Hayward, All Urban Consumers, Not Seasonally Adjusted),” (or another mutually agreed-upon index if this one is no longer published).

1.38 Dispose or Disposal. The final disposition of Garbage collected.

1.39 Disposal Facility. The CITY approved facility(ies) utilized by CONTRACTOR for the disposal, or processing as appropriate, of Garbage and other materials as appropriate and acceptable.

1.40 Dwelling Unit. Any individual living unit in a single-family dwelling, condominium, or town home (SFD), or MFD Units, or building intended for, or capable of being utilized for, residential living.

1.41 Effective Date. Effective date has the meaning specified in Section 2.01 of this Agreement.

1.42 Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, dead animals, and those wastes under the control of the Nuclear Regulatory Commission.

1.43 Franchised Diversion. Franchise Diversion means the rate of diversion for which CONTRACTOR is responsible to achieve as defined and calculated to achieve in Article 5.

1.44 Garbage Collection Service. The Collection and disposal of Garbage from City Service Units, Commercial Service Units, MFD Service Units, SFD Service Units.

1.45 Gross Billings. All billings as submitted by CONTRACTOR to CITY in accordance with Article 4 of this Agreement for the provision of Collection Services pursuant to this Agreement.

1.46 Household Hazardous Waste (HHW). Household products that can catch fire, react, or explode under certain circumstances, or that are corrosive or toxic as household hazardous waste.

Products, such as paints, cleaners, oils, batteries, and pesticides can contain hazardous ingredients and require special care in their disposal.

1.47 Hazardous Waste. Any material which is defined as a hazardous waste under California or United States laws or any regulations promulgated pursuant to such laws, as such laws or regulations may be amended from time to time.

1.48 Materials Recycling Facility (MRF). Any facility designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Materials for sale.

1.49 Maximum Service Rate. The maximum amount that CONTRACTOR may charge Service Recipients for Collection Services, as listed in **Exhibit 1**, and as may be adjusted in accordance with the provisions of this Agreement.

1.50 Mixed Use Dwelling. A building or structure which contains at least one (1) Business Service Unit and at least one (1) Dwelling Unit and utilizes a common Garbage Bin or Garbage Cart for the accumulation and Collection of Commercial Solid Waste.

1.51 MFD Collection Service. MFD Solid Waste Collection Service, MFD Recycling Service, MFD Organic Waste Collection Service, and MFD Large Item Collection Service. MFD Collection Service specifically includes the following:

- A. MFD Garbage Collection Service. The Collection of Residential Garbage, by CONTRACTOR, from MFD Service Units in the Service Area and the delivery of that Residential Garbage to a Disposal Facility.
- B. MFD Large Item Collection Service. The periodic on-call Collection of Large Items, by CONTRACTOR, from MFD Service Units in the Service Area and the delivery of those Large Items to a Disposal Facility, Materials Recycling Facility or such other facility as may be appropriate under the terms of this Agreement. MFD Large Item Collection Service may include the Collection of Large Items through the use of Roll-Off Containers.
- C. MFD Organic Waste Collection Service. The Collection of Organic Waste, by CONTRACTOR, from MFD Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility and the processing and marketing of those Organic Waste materials, and the disposal of all MFD Organic Waste Processing Residue.
- D. MFD Recycling Service. The Collection of Recyclable Materials by the CONTRACTOR from MFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all MFD Recyclable Materials Processing Residue.

1.52 MFD Unit. A building, or a portion thereof, designed for occupancy by three (3) or more families living independently of each other, and containing three (3) or more dwelling units.

1.53 Non-Collection Notice. A form developed and used by CONTRACTOR, as approved by CITY, to notify Service Recipients of the reason for non-collection of materials set out by the Service Recipient for Collection by CONTRACTOR pursuant to this Agreement.

1.54 Organic Waste Collection Service. The collection, processing and marketing of Organic Waste from City Service Units, Commercial Service Units, MFD Service Units, SFD Service Units (in the Service Area and the disposal of all Organic Waste Processing Residual.

1.55 Organic Waste Processing Facility. The CITY designated facility designed, operated and legally permitted for the purpose of receiving, and processing Food Waste, Green Waste, Large Green Waste, and Other Organics. The CONTRACTOR must transport all of the collected Organic Waste to this CITY designated facility.

1.56 Organic Waste Processing Residual. Materials Collected pursuant to this Agreement, including both Organic Waste, and Contaminants, that are delivered to an Organic Waste Processing Facility but are Residual as defined in Section 1.60.

1.57 Overage. Overage means excess Garbage, Organic Waste and Recyclable Materials (i) placed inside a Container that prevents the lid on the Container from being completely closed (i.e., lid remains open greater 45-degrees) or (ii) that could potentially result in excess materials spilling/dislodging during collection activity by CONTRACTOR's vehicles or require cleanup of the area around the Container.

1.58 Rebuilt Vehicle. For purposes of this Agreement, "rebuilt" means, at a minimum, replacement of all of the following: worn parts and reconditioning or replacement of hydraulic systems, transmissions, differentials, electrical systems, engines, and brake systems. In addition, the rebuilt vehicle must be repainted, and its tires must have at least eighty-five percent (85%) of tread remaining.

1.59 Recyclable Materials Collection Service. The collection, processing and marketing of Recyclable Material from City Service Units, Commercial Service Units, MFD Service Units, SFD Service Units and the disposal of all Recyclable Materials Processing Residual.

1.60 Residual or Residuals. Residual or Residuals means Garbage that is not diverted from landfill disposal after it has been delivered to an Organic Waste Processing Facility or a Recyclables Processing Facility for processing for diversion from landfill disposal. For determining the amount of Residuals in Recyclable Materials, CONTRACTOR shall conduct a characterization study of inbound Recyclable Materials by service line by July 1st of each year to be used for the subsequent twelve (12) month period.

1.61 Roll-Off Collection Service. The collection of Roll-Off Containers containing Solid Waste from SFD Service Units, MFD service Units, City Service Units, or Commercial Service Units on a permanent or temporary basis.

1.62 Roll-Off Container. A metal container with a capacity of ten (10) or more cubic yards that is normally loaded onto a motor vehicle and transported to an appropriate facility.

1.63 SB 1016. State of California Senate Bill 1016, approved September 16, 2008, establishing a per capita disposal based accounting system for diversion reporting in meeting the mandated 50 percent diversion requirement as set by AB 939. SB 1016 also changed reporting and review process so that jurisdictions meeting the 50 percent diversion requirement would be subject to review by CalRecycle (formally referred to as the CIWMB), every four years, while those jurisdictions not meeting the 50 percent diversion requirement would continue to be reviewed by CalRecycle every two years.

1.64 SB 1383. State of California Senate Bill 1383, approved September 19, 2016 mandates a fifty percent (50%) reduction statewide in disposal of Organic Materials from the 2014 levels by 2020 and seventy-five percent (75%) by 2025. A seventy-five percent (75%) reduction from the 2014 level requires California to limit disposal to roughly five (5) million tons of organics annually on and after 2025. Further, SB 1383 requires CalRecycle's regulations to include requirements designed to improve the recovery of edible food that is currently landfilled by twenty percent (20%) by 2025.

1.65 Service Area. That area within the city limits of the City of Los Banos designated by CITY as the Service Area as those limits may be adjusted from time to time by annexation or similar process as allowed under California law.

1.66 Service Recipient. An individual, Business, or the CITY, receiving SFD, MFD, Commercial, or CITY Collection Services.

1.67 Service Unit. SFD Service Units, MFD Service Units, City Service Units, or Commercial Service Units. Service Unit specifically includes the following:

- A. City Service Unit. City Facility(ies) that utilize a Bin, Cart, or Roll-Off Container(s) for the accumulation and set-out of Solid Waste. City Service Units are listed in **Exhibit 3**, and as may be modified by written notice to CONTRACTOR by the CITY.
- B. Commercial Service Unit. Business Service Units, City Service Units and Mixed-Use Dwellings that utilize a Garbage Bin, Cart, Compactor, Roll-Off Container for the accumulation and set-out of Commercial Solid Waste.
- C. Multi-Family Dwelling Service Unit (MFD). Five (5) or greater Dwelling Units in the Service Area sharing a Cart or Bin for the accumulation and set out of Commercial Solid Waste.
- D. SFD Service Unit. Any Single-Family Dwelling Unit (SFD) in the Service Area utilizing a Cart, or any combination of 1 – 4 Dwelling Units sharing Carts, for the accumulation and set out of Residential Solid Waste.

1.68 SFD Collection Service. SFD Garbage Collection Service, SFD Recycling Service, SFD Organic Waste Collection Service, SFD Large Item Collection Service, and SFD Used Oil Collection Service. SFD Collection Service specifically includes the following:

- A. SFD Garbage Collection Service. The Collection of Residential Garbage, by CONTRACTOR, from SFD Service Units in the Service Area and the delivery of that Residential Garbage to a Disposal Facility.
- B. SFD Large Item Collection Service. The periodic on-call Collection of Large Items, by CONTRACTOR, from SFD Service Units in the Service Area and the delivery of those Large Items to a Disposal Facility, Materials Recycling Facility or such other facility as may be appropriate under the terms of this Agreement. SFD Large Item Collection Service does not include the Collection of Large Items through the use of Roll-Off Containers.
- C. SFD Organic Waste Collection Service. The Collection of Organic Waste, by CONTRACTOR, from SFD Service Units in the Service Area, the delivery of those Organic Waste materials to an Organic Waste Processing Facility and the processing and marketing of those Organic Waste materials, and the disposal of all SFD Organic Waste Processing Residual.
- D. SFD Recycling Service. The Collection of Recyclable Materials by the CONTRACTOR from SFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recycling Facility and the processing and marketing of those Recyclable Materials, and the disposal of all SFD Recyclable Materials Processing Residual.

1.69 Sludge. The accumulated solids, residues, and precipitates generated as a result of waste treatment or processing in the Service Area, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects.

1.70 Solid Waste. The materials described in Public Resources Code section 40191, including Garbage, Recyclable Materials, Organic Waste, Construction and Demolition Debris, and Large Items. Solid Waste does not include Exempt Waste. Solid Waste specifically includes the following:

- A. Construction and Demolition Debris. Used or discarded materials resulting from construction, remodeling, repair or demolition operations on any type of structure.
- B. Food Waste. Food scraps and trimmings and other putrescible waste that results from food production, preparation, storage, consumption or handling. Food Waste includes but is not limited to meat, fish and dairy waste, fruit and vegetable waste, grain waste, and compostable food contaminated paper products. Food Waste does not include Exempt Waste.

- C. Garbage. All putrescible and non-putrescible solid, semi-solid and associated liquid waste, as defined in California Public Resources Code section 40191. Garbage does not include Recyclable Materials, Organic Waste, Large Items, Construction and Demolition Debris, or Exempt Waste. Garbage must be generated by and at the Service Unit wherein the Garbage is Collected. Garbage does not include those items defined as Exempt Waste. Garbage must be generated by and at the Service Unit wherein the Garbage is Collected. Garbage does not include those items defined as Exempt Waste.
- D. Green Waste. Any vegetative matter resulting from normal yard and landscaping maintenance that is not more than five (5) feet in its longest dimension or six (6) inches in diameter or weighs more than fifty (50) pounds. Green Waste includes plant debris, such as grass clippings, leaves, pruning, weeds, branches, brush, Holiday trees, and other forms of organic waste and must be generated by and at the SFD Service Unit where the Green Waste is Collected. Green Waste does not include items defined as Exempt Waste.
- E. Large Green Waste. Oversized Green Waste such as tree trunks and branches with a diameter of not less than six (6) inches and not more than two (2) feet and a length of not more than five (5) feet in its longest dimension, which are attributed to the normal activities of an SFD Service Unit. Large Green Waste must be generated by and at the SFD Service Unit where the Large Green Waste is Collected, and is Collected by means of Large Item Collection.
- F. Large Items. Those materials including furniture; carpets; mattresses; White Goods; Brown Goods; Large Green Waste which are attributed to the normal activities of an SFD Service Unit. Large Items must be generated by and at the SFD Service Unit wherein the Large Items are Collected. Large Items do not include items defined as Exempt Waste.
- G. Organic Waste. Food Waste, Green Waste, Large Green Waste, and Other Organics, either separately or commingled with each other, that has been separated at the source of generation from Garbage and Recyclable Materials.
- H. Other Organics. Other Organics includes compostable food-soiled paper and paper products, compostable food wares and compostable food packaging, stable materials, manure, and natural fiber textiles, and other compostable materials as may be required by the CITY or CalRecycle.
- I. Recyclable Materials. Those materials which are capable of being recycled using available processes and markets and which would otherwise be processed or disposed of as Residential Garbage or Commercial Garbage. These materials will be as defined by CITY. Recyclable Materials currently being Collected are included in **Exhibit 10**. CITY and CONTRACTOR agree to meet from time to time

as needed to discuss additions or deletions from the list of Recyclable Materials. CONTRACTOR may request removal of Recyclable Materials due to market limitations, which request will be decided by the Agreement Administrator.

- J. White Goods. Inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.

1.71 Used Oil. Any oil that has been refined from crude oil or has been synthetically produced, and is no longer useful to the Service Recipient because of extended storage, spillage or contamination with non-hazardous impurities such as dirt or water; or has been used and as a result of such use has been contaminated with physical or chemical impurities. Used Oil must be generated by an SFD or MFD Service Recipient. Used Oils does not include diesel oil, cooking oils or grease, mineral oil, transmission fluid, gasoline, hydraulic fluid, brake fluid or antifreeze.

1.72 Used Oil Filter. Any oil filter that is no longer useful to the Service Recipient because of extended storage, spillage or contamination with non-hazardous impurities such as dirt or water; or has been used and as a result of such use has been contaminated with physical or chemical impurities. Used Oil Filters must be generated by SFD or MFD Service Recipients.

1.73 Work Day. Any day, Monday through Saturday, that is not a holiday as set forth in Section 3.06 of this Agreement.

ARTICLE 2. Term of Agreement and Considerations

2.01 Initial Term. Subject to the provisions of this Agreement related Termination, the initial term of this Agreement will be for a ten (10) year period beginning midnight July 1, 2021 ("Effective Date") and terminating on 11:59 pm June 30, 2031.

2.02 Extension of Term Option. Provided that CONTRACTOR is not then in default of any material term or condition of the Agreement or has been previously designed as a "habitual violator" as provided in ARTICLE 22 and that the Extension Term Option has not been voided as provided in Section 2.04 below, CONTRACTOR may request a five (5) year term extension to the Initial Term ("Extended Term") by providing CITY with written notice of the request at least eighteen (18) months prior to the expiration of the Initial Term. CITY shall meet and confer with CONTRACTOR at least two (2) times prior to expiration of the Initial Term, but under no circumstances will CITY be obligated to extend the term. If CITY and CONTRACTOR shall fail to agree to terms for an extension, CITY may extend the Term in the exercise of the CITY's sole and absolute discretion for a period not to exceed two (2) years.

2.03 Performance Review Prior to Five (5) Year Extension. If CONTRACTOR requests a term extension as described in Section 2.02 above, then CITY may initiate a billing audit and performance review to be conducted as described in Section 11.02. Regardless of the outcome of this billing audit and performance review, CITY will have no obligation to extend the term of the Agreement.

2.04 Voiding of Term Extension Option. In the event CONTRACTOR materially fails to meet the minimum service and/or diversion requirements set forth in ARTICLES 5, 7, 8, and 9 during the Initial

Term, CONTRACTOR understands and agrees that its option to request an Extended Term from CITY shall be voided and this Agreement will terminate on June 31, 2031 as set forth in Section 2.01 of this Agreement.

2.05 Other Provisions. The CITY may, at the end of the Initial Term or Extended Term renegotiate the terms and conditions of the Agreement with the CONTRACTOR, excluding the negotiation of a payment to CITY, for an Extended Term and / or request proposals from qualified contractors to provide Collection Services. CITY retains the right to both negotiate with CONTRACTOR while concurrently conducting a request for proposal process.

2.06 Consideration for Franchise. In consideration for CITY's grant of the exclusive franchise, for negotiation of this Agreement, and for retention of the longstanding relationship with CITY, CONTRACTOR shall make when due the payments described in this Article, and as may otherwise be set forth in this Agreement, to CITY. All of CONTRACTOR's payments to CITY, whether described in this Article or otherwise in the Agreement, are general funds of the CITY subject to characterization, appropriation and expenditures at the sole discretion of the City Council.

ARTICLE 3. Services Provided by Contractor

3.01 Grant of Exclusive Agreement. Subject to the exceptions stated in Section 3.02, CITY hereby grants to CONTRACTOR, on the terms and conditions set forth herein, the exclusive franchise, right and privilege to collect, remove and dispose of, in a lawful manner, Solid Waste accumulating in the CITY's Service Area, as may be adjusted from time to time by approved annexations, that are required to be accumulated and offered for collection to the CONTRACTOR in accordance with the CITY's Municipal Code, for the Term of and within the scope set forth in this Agreement.

3.02 Recyclable Materials, Organic Waste, and Large Item Disposal by Service Recipients. Nothing in this Agreement will be construed as requiring Service Recipients to set out Recyclable Materials, Organic Waste, or Large Items for Collection by CONTRACTOR. Service Recipients may dispose of Recyclable Materials, Organic Waste, and Large Items by other appropriate means, including but not limited to, taking Recyclable Materials, Organic Waste, or Large Items to drop-off facilities and donating or selling such items to private or public entities.

3.03 Responsibility for Service Billing and Collection. CITY shall, strictly as a billing agent for CONTRACTOR, bill all Service Units for Collection Service (with the exception of mobile home park residents or SFD Service Units that do not receive waste and sewer services from CITY which shall be billed by CONTRACTOR) at the rate set forth in **EXHIBIT 1**. Billings may be made monthly or bimonthly for Service Recipients, as determined by CITY. CITY shall include in its bills to Service Recipients any applicable fees imposed by action of the City Council, including, but not limited to those as set forth in Article 4.8. Bills shall be prepared by CITY on the first business day of each even numbered month.

3.04 Service Standards. CONTRACTOR must perform all Collection Services under this Agreement in a thorough and professional manner.

3.05 Labor and Equipment. CONTRACTOR must provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of CONTRACTOR's obligations under this Agreement. CONTRACTOR must at all times have sufficient backup equipment and labor to fulfill CONTRACTOR's obligations under this Agreement. No compensation for CONTRACTOR's services or for CONTRACTOR's supply of labor, equipment, tools, facilities or supervision will be provided or paid to CONTRACTOR by CITY or by any Service Recipient except as expressly provided by this Agreement.

3.06 Holiday Service. The CITY observes New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day as legal holidays. CONTRACTOR is not required to provide Collection Services or maintain office hours on the designated holidays. In any week in which one of these holidays falls on a Work Day, SFD Collection Services for the holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week with normally scheduled Friday SFD Collection Services being performed on Saturday. Commercial Collection Services will be adjusted as set forth in ARTICLE 8 but must meet the minimum frequency requirements of one (1) time per week.

3.07 Inspections. The CITY has the right to inspect CONTRACTOR's facilities or Collection vehicles and their contents at any reasonable time while operating inside or outside the CITY.

3.08 Commingling of Materials.

3.08.1 Non-CITY Solid Waste. CONTRACTOR may not at any time commingle any materials Collected pursuant to this Agreement with any other material Collected by CONTRACTOR from any non-CITY Solid Waste, whether inside or outside the CITY, without at least thirty (30) days prior to the proposed comingling providing the Agreement Administrator with written justification of need to commingle materials, to the reasonable satisfaction of the Agreement Administrator. If comingling is approved and takes place, CONTRACTOR agrees to indemnify, defend and hold CITY harmless from any claims, demands, fines or penalties arising from CONTRACTOR's comingling.

3.08.2 Recyclable Materials. Subject to Section 3.09, CONTRACTOR must not at any time commingle SFD or Commercial Recyclable Materials Collected pursuant to this Agreement with any other material type Collected by CONTRACTOR without the express prior written authorization of the Agreement Administrator.

3.08.3 Organic Waste. Subject to Section 3.09, CONTRACTOR must not at any time commingle SFD or Commercial Organic Waste Collected pursuant to this Agreement with any other material type Collected by CONTRACTOR, without the express prior written authorization of the Agreement Administrator.

3.09 Recyclable Materials and Organic Waste Contamination. CONTRACTOR must offer the Service Recipients the correct combination of Cart, Bin and Roll-Off Container sizes and collection frequency that matches their unique service needs to reduce contamination of Recyclable Materials and Organic Waste. To support CITY's diversion goals and CONTRACTOR's Diversion Requirements as set forth in ARTICLE 5, CONTRACTOR is only required to collect Recyclable Materials if they have been separated by the Service Recipient from Garbage and Organic Waste, and is only be required to collect Organic Waste if it has been separated by the Service Recipient from Garbage and Recyclable Materials.

As part of CONTRACTOR's Public Education Services under Section 14.01, CONTRACTOR agrees to provide outreach and support to SFD Service Recipients. Additionally, CONTRACTOR's route collection personnel will report to CONTRACTOR's supervisors if they observe potential contamination problems, and/or insufficient collection capacity. For purposes of determining if Recyclable Materials or Organic Waste are deemed to be contaminated, if, by visual or digital inspection, Recyclable Materials are commingled with ten percent (10%) by weight or volume of Garbage or Organic Waste, or if, by visual inspection, Organic Waste is commingled with three percent (3%) by volume of Garbage or Recyclable Materials, then Recyclable Materials and/or Organic Waste will be deemed to be contaminated and CONTRACTOR may take the following steps:

3.09.1 SFD Service Recipients.

3.09.1.1 First Occurrence. For the first occurrence of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated container (as Solid Waste) and must affix a Contamination Violation Notice to the contaminated container which contains instructions on the proper procedures for sorting Recyclable Materials or Organic Waste, and must notify the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag), that for the second and subsequent incidents of excess contamination, the Service Recipient may be charged a contamination fee for the contaminated container, and for the third or subsequent occurrence of contamination, CONTRACTOR may increase the Cart size, or require an additional Cart, if necessary to provide the Service Recipient with adequate capacity to timely dispose of Recyclable Materials and Organic Waste without commingling. Prior to requiring an additional Cart, CONTRACTOR's representative must first attempt to contact the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag) to ensure that they have the appropriate level of service for proper collection of Recyclable Materials and/or Organic Waste. CONTRACTOR must also provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems.

3.09.1.2 Second Occurrence. For the second occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR will provide a Contamination Violation Notice that contains instructions on the proper procedures for setting out Recyclable Materials or Organic Waste, and CONTRACTOR must collect the contaminated Container (as Solid Waste) and will notify the CITY. For any contamination fee charge being assessed, CONTRACTOR must provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems. The CITY may charge the Service Recipient a contamination fee as set forth in **Exhibit 1**.

3.09.1.3 Third and Subsequent Occurrence. For the third or subsequent occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated Container (as Solid Waste) and must charge the Service Recipient a contamination fee as set forth in **Exhibit 1**. CONTRACTOR must continue providing the Recyclable Materials or Organic Waste Collection Services. CONTRACTOR must provide (or have provided) digital documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems and written Notices of contamination as described

above. CONTRACTOR must either (i) notify CITY within five (5) Business Days to adjust the offending Service Recipient to the appropriate Service Rate as set forth in **Exhibit 1** if CONTRACTOR increases in the Cart size or requires an additional Cart for excessive contamination, or (ii) notify the CITY to impose a contamination surcharge to the account for a period of six months or until the Service Recipient has demonstrated no contamination for a period of three consecutive months. CITY will consult with CONTRACTOR and consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the contamination. All CITY costs of such action shall be recoverable from the offending Service Recipients.

3.09.2 Commercial and MFD Service Recipients. The following provisions will apply to all Commercial and MDF Service Recipients except those eligible for temporary treatment pursuant to Section 3.09.3.

3.09.2.1 First Occurrence. For the first occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated container (as Solid Waste) and must affix a Contamination Violation Notice to the contaminated container which contains instructions on the proper procedures for sorting Recyclable Materials or Organic Waste, and must notify the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag), that for the second and subsequent incidents of contamination, the Service Recipient will be charged a contamination fee for the contaminated container, and for the third or subsequent occurrence of excess contamination, CONTRACTOR may increase the Cart or Bin size, if necessary to provide the Service Recipient with adequate capacity to timely dispose of Recyclable Materials and Organic Waste without commingling, or collection frequency or impose a contamination surcharge on the account for a period of six months or until the Service Recipient has demonstrated no contamination for a period of three consecutive months. Prior to increasing the Cart or Bin size Cart CONTRACTOR's representative must first attempt to contact the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag) to ensure that they have the appropriate level of service for proper collection of Recyclable Materials and/or Organic Waste. CONTRACTOR must also provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's contamination problem.

3.09.2.2 Second Occurrence. For the second occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR will provide a Contamination Violation Notice that contains instructions on the proper procedures for setting out Recyclable Materials or Organic Waste, and CONTRACTOR must collect the contaminated Container (as Solid Waste) and will notify the CITY. For any contamination fee charge being assessed, CONTRACTOR must provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems. The CITY may charge the Service Recipient a contamination fee as set forth in **Exhibit 1**.

3.09.2.3 Third and Subsequent Occurrence. For the third and subsequent occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated Container (as Solid Waste) and must charge the Service Recipient a contamination fee as set forth in **Exhibit 1**. CONTRACTOR must

continue providing the Recyclable Materials or Organic Waste Collection Services. CONTRACTOR must provide (or have provided) digital documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems and written Notices of contamination as described above. CONTRACTOR must either (i) notify CITY within five (5) Business Days to adjust the offending Service Recipient to the appropriate Service Rate as set forth in **Exhibit 1** if CONTRACTOR increases in the Bin or Cart size or frequency of collection for excessive contamination, or (ii) notify the CITY to impose a contamination surcharge to the account for a period of six months or until the Service Recipient has demonstrated no contamination for a period of three consecutive months. CITY will consult with CONTRACTOR and consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the contamination. All CITY costs of such action shall be recoverable from the offending Service Recipients.

3.09.3 Exception to Commercial or MFD Contamination Procedures. The following provisions will only apply to New Commercial and MFD Service Recipients on or after July 1, 2021 and to those Service Recipients as of July 1, 2021 who were not then receiving Recyclable Materials or Organic Waste Collection Service. For eligible Service Recipients the contamination procedures provided below will apply for the first year of their new service, or for existing service recipients will only apply for one year commencing July 1, 2021. After this grace period, the provisions of Section 3.09.2 will be applicable to the Service Recipient.

3.09.3.1 First Occurrence. For the first occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated container (as Solid Waste) and must affix a Contamination Violation Notice to the contaminated container which contains instructions on the proper procedures for sorting Recyclable Materials or Organic Waste, and must notify the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag), that for the second and subsequent incidents of excess contamination, the Service Recipient may be charged a contamination fee for the contaminated container, and for the third or subsequent occurrence of excess contamination, CONTRACTOR may increase the Cart or Bin size, if necessary to provide the Service Recipient with adequate capacity to timely dispose of Recyclable Materials and Organic Waste without commingling, or collection frequency or impose a contamination surcharge as provide in Section 3.09.2. Prior to requiring an additional Cart CONTRACTOR's representative must first attempt to contact the Service Recipient by phone, U.S. mail, e-mail, or in person (which may be a container tag) to ensure that they have the appropriate level of service for proper collection of Recyclable Materials and/or Organic Waste. CONTRACTOR must also provide digital/visual documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems.

3.09.3.2 Second Occurrence. For the second occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR will provide a Contamination Violation Notice that contains instructions on the proper procedures for setting out Recyclable Materials or Organic Waste, and CONTRACTOR must collect the contaminated Container (as Solid Waste) and will notify the CITY. For any contamination fee charge being assessed, CONTRACTOR must provide digital/visual documentation to the Service Recipient that clearly

documents the Service Recipient's on-going contamination problems. The CITY may charge the Service Recipient a contamination fee as set forth in **Exhibit 1**.

3.09.3.3 Third and Subsequent Occurrence. For the third or subsequent occurrence within any twelve-month period of contamination for a particular container (i.e., Recyclable Materials or Organic Waste), CONTRACTOR must collect the contaminated Container (as Solid Waste) and must charge the Service Recipient a contamination fee as set forth in **Exhibit 1**. CONTRACTOR must continue providing the Recyclable Materials or Organic Waste Collection Services. CONTRACTOR must provide (or have provided) digital documentation to the Service Recipient that clearly documents the Service Recipient's on-going contamination problems and written Notices of contamination as described above. CONTRACTOR must either (i) notify CITY within five (5) Business Days to adjust the offending Service Recipient to the appropriate Service Rate as set forth in **Exhibit 1** if CONTRACTOR increases in the Bin or Cart size or frequency of collection for excessive contamination, or (ii) notify the CITY to impose a contamination surcharge to the account for a period of six months or until the Service Recipient has demonstrated no contamination for a period of three consecutive months. CITY will consult with CONTRACTOR and consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the contamination. All CITY costs of such action shall be recoverable from the offending Service Recipients.

3.09.4 Tracking Occurrences of Contamination. Regarding Sections 3.09.1 – 3.09.3, each Contamination occurrence is tracked annually per Calendar Year, and resets at the start of each Calendar Year.

3.09.5 Disputes Over Excess Contamination Charges. If Service Recipient disputes a contamination charge (which must be within 30 days of them being assessed), CITY shall temporarily halt any contamination charge and/or increased Maximum Service Rate resulting from increasing the Cart or Bin size or collection frequency, and request a ruling by the City Manager to resolve the dispute. A rule by the City Manager on any such dispute must be filed within ten (10) Business Days of CITY's halting of contamination charge, or increased Maximum Rate, and must include written documentation and digital/visual evidence of ongoing overall problems. The City Manager may request a meeting (in person or phone) with both the Service Recipient and CONTRACTOR to resolve the dispute. Following such a meeting, the City Manager will rule on the dispute within ten (10) Business Days, and the City Manager's decision on resolving the dispute between and Service Recipient will be final. If the City Manager rules in favor of the Service Recipient, the CITY will credit the disputed contamination charges or increased Maximum Service Rate. If the City Manager rules in favor of CONTRACTOR, CITY may charge Service Recipient the prior halted contamination charge and/or increased Maximum Service Rate resulting from increasing the Cart or Bin number, size, or collection frequency and may follow the steps in Section 4.11 for collection of delinquent accounts.

3.10 Container Overage and Correction Procedures.

3.10.1 Overage and Correction Procedures.

CONTRACTOR shall offer the Service Recipients the correct combination of Cart, Bin and Roll-Off Container sizes and collection frequency that matches each Service Recipient's unique service needs to enable clean, efficient, and cost-effective collection of Solid Waste. CITY and CONTRACTOR agree that overflow of Solid Waste that is not properly in the Service Recipient's Cart(s), Bin(s) or Roll-Off Container(s) may negatively impact public health and safety. CONTRACTOR has also agreed to conduct recycling audits and provide outreach and support to Service Recipient accounts receiving the correct service level. However, in the event that Service Recipients are found to habitually overflow their Solid Waste Cart(s), Bin(s) or Roll-Off Container(s), CONTRACTOR may take the steps as listed below to correct Service Recipient's on-going overflow of Solid Waste.

3.10.1.1 Prior Arrangements for Collection. If the Service Recipient has made prior arrangements with CONTRACTOR for collection of Solid Waste Overages, CONTRACTOR must collect such overages as arranged, and must notify the City to charge the Service Recipient the Solid Waste Overage fee (prior arrangement) rate set forth in **Exhibit 1**.

3.10.1.2 No Prior Arrangements. If the Service Recipient has not made prior arrangements with CONTRACTOR for collection of Solid Waste Overage, (i) CONTRACTOR may collect such Solid Waste Overage without notifying the CITY to charge Service Recipient the Solid Waste Overage fee as a courtesy, (ii) CONTRACTOR may not collect the Solid Waste Overage and leave a Non-Collection Notice explaining the reason for non-collection of the Solid Waste Overage, (iii) CONTRACTOR may collect the Solid Waste Overage and notify the CITY to charge the Service Recipient the Solid Waste Overage fee (no prior arrangement) rate set forth in **Exhibit 1** as provided below, or increase the capacity or frequency of collection of the existing Cart(s), Bin(s) and Roll-Off Container(s) to match documented service needs as provided below. In managing Solid Waste Overages, the following apply:

3.10.2 SFD Service Recipients.

3.10.2.1 Each Occurrence. For each occurrence CONTRACTOR will not collect the Solid Waste Overage and CONTRACTOR must provide the following written notice (via e-mail, U.S. mail, or in person (which may be by Non-Collection Notice) to the Service Recipient: (i) the date, description and photograph of the Solid Waste Overage. CONTRACTOR's Non-Collection Notice for SFD Service Recipients shall also contain instructions on (a) how to schedule a Large Item Collection or (b) request an additional Cart to eliminate future Overages.

3.10.3 Commercial and MFD Service Recipients.

3.10.3.1 Each Occurrence. CONTRACTOR must provide a written notice on the Container, and may provide a copy of the notice via e-mail, U.S. mail, or in person (which may be by Non-Collection Notice) to the Service Recipient with the date, description and photograph of the Solid Waste Overage and notify the CITY of each occurrence. CITY may charge the Service Recipient a Solid Waste Overage fee as set forth in **Exhibit 1**, and increase the capacity or collection frequency of the Cart, Bin or Roll-Off Container to match documented service needs. At least ten (10) Business Days prior to increasing the Cart, Bin or Roll-Off Container size or frequency of Collection, CONTRACTOR's representative must also contact the Service Recipient by phone, U.S. mail, e-mail or in person (which may

be by Non-Collection Notice) to ensure that Service Recipient has the appropriate level of service. CONTRACTOR must notify CITY within ten (10) Business Days of any changes in Service Recipient's Cart, Bin or Roll-Off Container size or collection frequency. The increased capacity or collection frequency will remain in effect until CONTRACTOR determines that it is no longer needed to prevent overages, which may be longer than the one Calendar Year stated above. Such determination will be in CONTRACTOR's sole but reasonable discretion and will be subject to the dispute resolution procedure set forth below. CITY will consider, and pursue as applicable, appropriate legal remedies against offending Service Recipients in order to secure discontinuance of the overages. All CITY costs of such action shall be recoverable from the offending Service Recipients.

3.10.4 Tracking Occurrences of Solid Waste Overage. Regarding Sections 3.10.2 – 3.10.3, each Solid Waste Overage occurrence is tracked annually per Calendar Year, and resets at the start of each Calendar Year.

3.10.5 Disputes Over Container Overage Charges. If Service Recipient disputes Solid Waste Overage charge or size or collection frequency change (must be within 30 days of the disputed action), CITY must temporarily halt Solid Waste Overage charge and/or increased Maximum Service Rate resulting from increasing the Solid Waste Cart, Bin or Roll-Off Container size or collection frequency, and request a ruling by the City Manager to resolve the dispute. The City Manager to rule on any such dispute must be filed within ten (10) Business Days of CITY's halting of Solid Waste Overage charge, or increased Maximum Rate, and must include written documentation and digital/visual evidence of ongoing overall problems. The City Manager may request a meeting (in person or phone) with both the Service Recipient and CONTRACTOR to resolve the dispute. Following such a meeting, the City Manager will rule on the dispute within ten (10) Business Days, and the City Manager's decision on resolving the dispute between and Service Recipient will be final. If the City Manager rules in favor of the Service Recipient, CITY must credit the disputed charge or increased Maximum Service Rate. If the City Manager rules in favor of CONTRACTOR, CITY may charge Service Recipient the prior halted Solid Waste Overage charge and/or increased Maximum Service Rate resulting from increasing the Solid Waste Cart, Bin or Roll-Off Container number, size, or collection frequency and may follow the steps in Section 4.11 for collection of delinquent accounts.

3.11 Ownership of Materials. Except as provided otherwise under Applicable Law, title to Solid Waste will pass to CONTRACTOR at such time as said materials are placed in the appropriate collection container and set out for collection by CONTRACTOR.

3.12 Voluntary Use of Facilities. The CONTRACTOR, without constraint as a free-market business decision in accepting this Agreement, agrees to use the Disposal Site, Recyclable Materials Processing Site, and Organic Materials Processing Site as approved and directed by the CITY for the purpose of Disposing of all solid waste, and Transfer and Processing of all Recyclable Materials and Organic Waste it collects in the CITY. Such decision by CONTRACTOR in no way constitutes a restraint of trade notwithstanding any change in Law regarding flow control limitations or any definition thereof.

3.13 Spillage and Litter. CONTRACTOR shall not litter premises in the process of providing Collection Services or while its vehicles are on the road. CONTRACTOR must transport all materials

Collected under the terms of this Agreement in such a manner as to minimize the spilling or blowing of such materials from CONTRACTOR's vehicles. CONTRACTOR must exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of Solid Waste and must immediately, at the time of occurrence, clean up such spilled or dropped Solid Waste.

3.13.1 Except as provided in Section 8.02.3, CONTRACTOR is not responsible for cleaning up sanitary conditions caused by the carelessness of the Service Recipient; however, CONTRACTOR must clean up any material or residue that is spilled or scattered by CONTRACTOR or its employees and report such instances in writing to the CITY by the close business within one (1) working day of the occurrence.

3.13.2 Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from CONTRACTOR's operations or equipment repair must be covered immediately with an absorptive material and removed from the street surface. If such fluid leakage or spillage results in staining the street or sidewalk surface, CONTRACTOR must apply a suitable cleaning agent to the street surface to provide adequate cleaning.

3.13.3 The above paragraphs notwithstanding, CONTRACTOR must clean up any spillage or litter caused by CONTRACTOR within the same Work Day upon notice from the CITY.

3.13.4 To facilitate such cleanup, CONTRACTOR's vehicles must at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

3.14 Regulations and Record Keeping. CONTRACTOR must comply with emergency notification procedures required by applicable laws and regulatory requirements. All records required by regulations must be maintained at CONTRACTOR's facility. These records must include waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

ARTICLE 4. Charges and Contractor Compensation

4.01 Billings by CITY. The CITY, and not the CONTRACTOR, shall be responsible for the billing and collection of payments from Service Recipients. CONTRACTOR will work directly with the CITY Representative to develop a protocol for answering all Customer billing questions.

4.02 CONTRACTOR Billing Account Information. The CONTRACTOR shall be responsible for providing the CITY with complete customer billing account and service level data for all Collection services provided by CONTRACTOR under this Agreement during the prior month, in an electronic format that is acceptable to the CITY. Each invoice shall be accompanied by an accounting, which sets forth CONTRACTOR'S Gross Billings for all services provided during the preceding month in sufficient detail to allow for an independent recalculation of monies due to CONTRACTOR. This information will be provided on a monthly basis by the 15th day of the month for services provided by CONTRACTOR during the prior month. Any changes to the electronic format or submission date shall be expressly approved in writing by the CITY.

4.03 CITY Payments for CONTRACTOR's Compensation. CITY shall pay CONTRACTOR on the last day of each month for services provided by CONTRACTOR during the prior invoice period. The CITY shall deduct from the payments due to CONTRACTOR by CITY the amounts as set forth in Section 4.08 below.

4.04 CPI Adjustments to CONTRACTOR'S Compensation. CONTRACTOR'S sole compensation is derived from the application of the Maximum Service Rates to actual services provided to SFD, MFD, and Commercial Service Recipients. The Maximum Service Rates are as specified in **Exhibit 1** of this Agreement, and are firm and fixed through June 30, 2022. CONTRACTOR shall not be entitled to any compensation that is not listed in **Exhibit 1**, as adjusted from time to time in accordance with this Agreement. On or after July 1, 2022, and each subsequent July 1st, CONTRACTOR's Maximum Service Rates shall be adjusted as follows:

4.04.1 Adjustments to Maximum Service Rates on July 1, 2022. Beginning on July 1, 2022, and annually thereafter, the Maximum Service Rates will be adjusted to the calculated percentage in this section, but capped at maximum increase of three point five percent (3.5%), or whichever is lower. In any year that the calculation of the CPI is negative (below 0.00%), the adjustment to Maximum Service Rates will be set to 0.00% (no adjustment). The calculations are as follows:

Each Maximum Service Rate adjustment shall be calculated by multiplying the prior year's rate by 80% of the percentage change in the "Consumer Price Index (San Francisco – Oakland – Hayward, All Urban Consumers, Not Seasonally Adjusted)," (or another mutually agreed-upon index if this one is no longer published) between the most recently published February index and the corresponding index published twelve months earlier, or 3.5% whichever is less.

Service Rate = Prior Years' Service Rate x (0.80 ((February 2021 CPI – February 2020 CPU)/February 2020 CPI)) + Prior Year's Service Rate

For Example,

Prior Year's Service Rate = \$25.00

February 2021 CPI = 180.2

February 2020 CPI = 172.8

Calculated CPI = (180.2 – 172.8)/172.8 = 0.0428

Eighty percent of Calculated CPI = 0.0428 x 80% = 0.0342

Amount of increase = \$25.00 x 0.0342 = \$0.86

Adjusted Monthly Service Rate = \$25.00 + \$0.86 = \$25.86

4.04.2 Rounding. Adjustments to the overall Maximum Service Rates 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.

4.04.3 CITY Approval of Maximum Service Rates. On or before June 1, 2022, and annually thereafter during the term of this Agreement, the CITY Representative shall notify CONTRACTOR

of the Maximum Service Rate adjustments to take place on the subsequent July 1st. CITY shall take action on any changes in the Maximum Service Rates in accordance with the CITY'S Municipal Code.

4.05 Adjustments Due to Material Change In Law.

4.05.1 If a Material Change in Law occurs after the date hereof, then CITY and CONTRACTOR shall negotiate in good faith a reasonable and appropriate adjustment to Maximum Service Rates sufficient to offset CONTRACTOR's increased allowable costs of operation or reduced Gross Billings resulting from the Material Change in Law. As an exception to the preceding sentence, CONTRACTOR shall not be entitled to an adjustment in Maximum Service Rates with respect to the first **Thirty Thousand Dollars (\$30,000)** in increased costs or decreased revenues incurred by CONTRACTOR resulting from the Material Change in Law.

4.05.2 The Parties may negotiate and agree on the amount of any Maximum Service Rate adjustment pursuant to this Section 4.05 without a Detailed Rate Review. CONTRACTOR shall bear the burden of justifying to CITY any adjustment due to a Material Change in Law and shall bear its own costs of preparing its request for an adjustment and supporting documentation. CITY may request from CONTRACTOR such further information as it reasonably deems necessary to fully evaluate CONTRACTOR'S request and make its determination whether CONTRACTOR has satisfied its burden, which determination shall not be unreasonably withheld. CITY shall notify CONTRACTOR of its determination within ninety (90) calendar days of receipt of the written request and all other additional information reasonably requested by CITY. Any such change will be implemented on the following July 1st, or within any other time frame agreed upon between CITY and CONTRACTOR. The adjustment in Maximum Service Rates shall be approved by the City Council and memorialized in a written amendment to this Agreement."

4.06 "Detailed Rate Review. Only if requested by the CITY a Detailed Rate Review may be conducted provided that a pre-established methodology, found in **Exhibit 9**, is agreed to by both the CITY and the CONTRACTOR. The CONTRACTOR is responsible for paying for the Detailed Rate Review.

4.07 Adjustments Due to Changes in Fees, Payments, or CITY Services. In the event that CITY elects to increase the amount of fees or payments beyond those increases provided for in Sections 4.08 below, or in the event the CITY requests CONTRACTOR to perform additional CITY Collection Services beyond those services listed in this Agreement, the CONTRACTOR shall be eligible for an additional adjustment as part of their regularly scheduled July 1st Maximum Service Rate adjustment to cover the cost of those new fees, payments and/or services. This additional adjustment shall be calculated using the following methodology, and such calculation must be included in the CONTRACTOR'S regular rate adjustment request submitted to the CITY by February 1st in order for the CONTRACTOR to be eligible to receive the additional rate adjustment:

4.07.1 The CONTRACTOR shall calculate this additional rate adjustment percentage using the following steps:

- (A) Determine Percent of CONTRACTOR's Gross Billings: The total dollar value of the new/increased fees, payments and/or services *Divided by* the total reported CONTRACTOR's prior year annual Gross Billings.

*Example: \$200,000 value of new fees or services /
\$5,000,000 CONTRACTOR's Gross Billings = 4.0%*

- (B) Determine Additional Percentage Rate: The total dollar value of the new/increased fees, payments and/or services *Multiplied by* the total dollar value of the new/increased fees, payments and/or services.

*Example: \$200,000 value of new fees or services X
4.0% from (A) above = \$6,000*

- (C) Determine Percentage Rate: CONTRACTOR's prior year annual *Gross Billings + dollar value of new fees or services + the dollar value of increased Administrative Fee Divided by* CONTRACTOR's prior year annual *Gross Billings*.

*Example \$5,000,000 + \$200,000+\$6,000 = \$5,206,000 /
\$5,000,000 = 4.12% Rate Increase*

"The total estimated CONTRACTOR Gross Billings for the current Agreement Year" (B) shall be calculated as: the CONTRACTOR'S total Gross Billings as reported to the CITY for the previous Agreement Year, multiplied by one (1) plus the approved rate adjustment percentage which became effective on the most recent July 1st. If approved, the calculated additional rate adjustment percentage shall be added to the CONTRACTOR'S regularly scheduled CPI rate adjustment percentage effective the upcoming July 1st in accordance with Section 4.04.1 above.

4.08 CONTRACTOR's Payments to CITY. CONTRACTOR shall make payment to the CITY of an Administrative Fee, AB 939 Support Fee, Vehicle Impact Fee, and Other Fees as may be specified in this Section 4.08. Contractor Payments to CITY will be done on a monthly basis as in the manner as specified in Section 4.03. The amount for each payment is specified IN Sections 4.08.1 through 4.08.6. All Fees as listed in this Section 4.08 shall be paid on a monthly basis in a manner specified in Section 4.3 above.

4.08.1 Administrative Fee. The CONTRACTOR shall pay an Administrative Fee to the CITY. The Administrative Fee will be a percentage of CONTRACTOR'S Gross Billings submitted to CITY each month under the terms of this Agreement. The Administrative Fee percentage shall be **Seven Percent (7.00%) of Gross Billings** unless otherwise adjusted by the CITY. In the event that the CITY adjusts the Administrative Fee percentage, the Maximum Service Rates will also be adjusted simultaneously and commensurately, to incorporate any such changes in the Administrative Fee percentage.

4.08.2 AB 939 Support Fee. The CONTRACTOR shall pay an AB 939 Support Fee to the CITY for the CITY'S costs to provide AB 939 Support Services. The AB 939 Support Fee will be a percentage of CONTRACTOR'S Gross Billings submitted to CITY each month under the terms of this

Agreement. The AB 939 Support Fee percentage shall be **Three Percent (3.00%) of Gross Billings** unless otherwise adjusted by the CITY. In the event that the CITY adjusts the AB 939 Support Fee percentage, the Maximum Service Rates will also be adjusted simultaneously and commensurately, to incorporate any such changes in the AB 939 Support Fee percentage.

4.08.3 Vehicle Impact Fee. The CONTRACTOR shall pay a Vehicle Impact Fee to the CITY. For the first Agreement Year, CONTRACTOR shall pay **Four Hundred Thousand Dollars (\$400,000.00)**. Beginning July 1, 2022, the total annual amount of this fee will be adjusted annually by the same percentage change as the percentage change in CONTRACTOR'S Maximum Service Rates. In the event that the CITY adjusts the Vehicle Impact Fee, the Maximum Service Rates will also be adjusted simultaneously and commensurately, to incorporate any such changes in the Vehicle Impact Fee.

4.08.4 Other Fees. The CONTRACTOR shall pay any other fees the City. The City may set other fees, as it deems necessary. Such other fees may include, but shall not be limited to, franchise fees, landfill closure funding, and street sweeping operations. The amount, time, and method of payment and adjustment process shall be set in a manner similar to that for other fees described in this Section.

4.09 Annual Billing and Account Reconciliation.

4.09.1 CONTRACTOR Field Billing Audit. CONTRACTOR must, on a quarterly basis, physically verify all Service Recipients service levels against the service billing information provided by CONTRACTOR to the CITY. CONTRACTOR shall send a summary report to the CITY on the 15th day following the close of the prior quarter.

4.09.2 CITY Billing Audit. The CITY, on a quarterly basis, shall conduct an internal Billing Audit to verify that their customer billing information matches the results from Section 4.09.1.

4.09.3 Billing Account Information Reconciliation. Should a discrepancy be found between the CONTRACTOR's and the CITY's customer billing information in Sections 4.09.2 and 4.09.2, the customer billing data will be updated in both party's customer data bases, and discrepancies shall be credited to the CITY or credited to the CONTRACTOR on the next month's CONTRACTOR's payments to the CITY, as set forth in Section 4.01.

4.10 CONTRACTOR's Payment to CITY for Agreement Negotiation. CONTRACTOR shall reimburse CITY in the amount of \$150,000 for the Collection and Transfer Agreement negotiation costs incurred by CITY. This one-time payment is due within thirty (30) days of the execution date of the Franchise Agreement.

4.11 Open Code Violation Cases. Service Recipients (SFD, MFD, or Commercial) which have open code violation cases with the CITY relating to their Service Unit related to the performance of this Agreement are ineligible to enter service of construction contracts with the CITY. This restriction applies whether the open code violation case applies to the work proposed to be performed under contract with the CITY or other violations of CITY Code or regulations. If a code violation case is open after the Agreement is signed, the CITY will withhold **ten percent (10%)** of the CONTRACTOR's compensation pursuant to this

Agreement until compliance is achieved. If compliance is not achieved by the termination or expiration date of this Agreement, or within one hundred and eighty (180) days of the opening date of the case (whichever is longer) the withheld amount shall be permanently retained by the CITY. If monies are withheld from the CONTRACTOR, CONTRACTOR shall be ineligible to bid on future CITY work until the City Manager verifies that compliance has been achieved. This remedy is non-exclusive, and in addition to any other remedies in law or equity available to the CITY.

ARTICLE 5. Diversion Requirements

5.01 CONTRACTOR'S Diversion Requirements. CONTRACTOR shall fully implement the Diversion Plan provided in **Exhibit 7**, and shall assist CITY in reaching CalRecycle's 75% goal by June 31, 2031. In addition, CONTRACTOR is required to achieve the following minimum diversion rates:

5.01.1 CONTRACTOR is required to divert a minimum of forty percent (40%) of all materials collected from all services under the provisions of this Agreement starting July 1, 2021. And measured for calendar year 2021.

5.01.2 CONTRACTOR is required to divert a minimum of forty-five percent (45%) of all materials collected from all services under the provisions of this Agreement during calendar year 2022 (measured for the calendar year as a whole).

5.01.3 CONTRACTOR is required to divert a minimum of fifty percent (50%) of all materials collected from all services under the provisions of this Agreement for both calendar year 2023 and calendar year 2024 (measured separately for each calendar year).

5.01.4 CONTRACTOR is required to divert a minimum of fifty-five percent (55%) of the materials it collects pursuant to this Agreement for calendar year 2025 and each year thereafter during the term of this Agreement (measured separately for each calendar year).

5.02 CITY Remedies. In its sole discretion, the CITY may take the following actions in the event that CONTRACTOR does not meet its diversion requirements under Section 5.01 above:

5.02.1 For calendar years 2021 and 2022, if CONTRACTOR does not meet the minimum diversion requirements specified in Sections 5.01.1 and 5.01.2 in either year, then CITY may assess liquidated damages in accordance with Section 18.04.

5.02.2 For calendar year 2023 and 2024, if CONTRACTOR does not meet the minimum diversion requirement specified in Sections 5.01.3 in either year, then, at CITY's option, either (a) CITY may assess liquidated damages in accordance with Section 19.04, or (b) CONTRACTOR shall implement additional diversion program(s) at no cost to CITY or rate payers (such program(s) to be proposed by CONTRACTOR and approved by CITY, such approval not to be unreasonably withheld).

5.02.3 For calendar years 2025 and onwards, if CONTRACTOR does not meet the minimum diversion requirement specified in Sections 5.01.4, then, at CITY's option, either (a) CITY may assess liquidated damages in accordance with Section 19.04, or (b) CONTRACTOR shall implement

additional diversion program(s) at no cost to CITY or rate payers (such program(s) to be proposed by CONTRACTOR and approved by CITY, such approval not to be unreasonably withheld). In addition, regardless of which option CITY chooses, if CONTRACTOR does not meet the minimum diversion requirement in any calendar year from 2025 onwards, in its sole reasonable discretion, CITY may declare CONTRACTOR ineligible to receive a term extension in accordance with Section 2.02.

5.02.4 Notwithstanding the foregoing provisions and without waiving CITY's rights and remedies under this Agreement for CONTRACTOR's non-performance, in the event CONTRACTOR is unable to meet the minimum diversion requirements set forth in Section 5.01, CITY may, in its sole reasonable discretion, elect not to assess liquidated damages for CONTRACTOR's non-performance, pursuant to Section 19.04, and CONTRACTOR may be eligible to receive a term extension in accordance with Section 2.02, so long as CONTRACTOR demonstrates to CITY's reasonable satisfaction that (a) CONTRACTOR undertook, in good faith, comprehensive efforts, in accordance with best industry practices, to meet the minimum diversion requirements under Section 5.01 but was unable to do so for reasons outside of CONTRACTOR's control and (b) CONTRACTOR implemented additional diversion program(s) at no cost to CITY or rate payers (such program(s) to be proposed by CONTRACTOR and approved by CITY, such approval not to be unreasonably withheld), as provided under Section 24.01.

5.03 CONTRACTOR's Diversion Requirements. For purposes of this ARTICLE 5, the CITY's diversion rate is calculated by CalRecycle and must meet or exceed the diversion requirements of the Applicable Laws (including AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383, and all amendments and related subsequent legislation including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements), and that it will do so without imposing any costs or fees other than those set forth on **Exhibit 1**, except as provided in Section 23.01.1. CONTRACTOR's Franchised Diversion requirements shall be deemed not to be met if CITY diversion rate does not meet CalRecycle minimum requirements.

CONTRACTOR warrants that it is aware of and familiar with CITY's waste stream, and that it has the ability to and must provide sufficient programs and services designed to ensure CITY will meet or exceed the diversion requirements as set forth in this ARTICLE 5, as well as the diversion requirements of the Applicable Laws.

5.04 Mutual Cooperation. CITY and CONTRACTOR will reasonably cooperate in good faith with all efforts by each other to meet CITY's diversion and other compliance requirements imposed by the Applicable Laws, including without limitation, AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383, and to meet CONTRACTOR's obligations under this ARTICLE 5. In this regard, CITY's obligations include, without limitation, making such petitions and applications as may be reasonably requested by CONTRACTOR for time extensions in meeting diversion goals, or other exceptions from the terms of Applicable Laws, and to agree to authorize such changes to CONTRACTOR's Solid Waste Collection Services, or Collection Service programs as may be reasonably requested by CONTRACTOR in order to achieve the minimum requirements of this ARTICLE 5.

5.05 Guarantee. Except for programs currently required by Applicable Law but not set forth in this Agreement, or programs CONTRACTOR is expressly instructed by CITY not to implement, or

services which a Service Recipient refuses to accept, CONTRACTOR guarantees that it will implement the diversion programs set forth in this Agreement such that: (i) CONTRACTOR and CITY will at all times be in compliance with the requirements of the Applicable Laws applicable to them including without limitation AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383, and (ii) CITY will meet or exceed the diversion requirements (including, without limitation, amounts of Garbage to be diverted, time frames for diversion, and any other requirements) set forth in this ARTICLE 5 and the Applicable Laws including without limitation AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383, and all amendments thereto (subject to Section 21.02). In this regard CONTRACTOR agrees that it will, in addition to any other Agreement requirement, at its sole cost and expense:

5.05.1 Assist CITY in responding to inquiries from CalRecycle or any other regulatory agency;

5.05.2 Assist CITY in preparing for, and participating in, CalRecycle's biannual review of CITY's SRRE pursuant to Public Resources Code section 41825;

5.05.3 Assist CITY in applying for any extension, including under Public Resources Code section 41820.5, if so directed by CITY;

5.05.4 Assist CITY in any hearing conducted by CalRecycle, or any other regulatory agency, relating to CITY's compliance with the Applicable Laws including without limitation AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383;

5.05.5 Assist CITY with the development of and implement a public awareness and education program that is consistent with CITY's SRRE and Household Hazardous Waste Element, as well as any related requirements of the Applicable Laws; and

5.05.6 Provide CITY with Recycling, source reduction, and other technical assistance as may be needed to comply with the Applicable Laws including without limitation AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383.

ARTICLE 6. Service Units

6.01 Service Units. Service Units include all the following categories of premises which are in the Service Area as of July 1, 2021 and all such premises which may be added to the Service Area by means of annexation, new construction, or as otherwise set forth in this Agreement during the term of this Agreement:

6.01.1 SFD Service Units,

6.01.2 Commercial Service Units (includes MFD Service Units),

6.01.3 City Service Units,

6.01.4 Any question as to whether a premise falls within one of these categories will be determined by the Agreement Administrator and the determination of the Agreement Administrator will be final.

6.02 Service Unit Changes. CITY and CONTRACTOR acknowledge that during the term of this Agreement it may be necessary or desirable to add or delete Service Units for which CONTRACTOR will provide Service.

6.02.1 Additions and Deletions. CONTRACTOR must provide services described in this Agreement to new Service Units in CONTRACTOR's Service Area within five (5) Work Days of receipt of notice from CITY or the new Service Unit to begin such Service.

6.03 Annexation. If during the term of the Agreement, additional territory within or adjacent to the CONTRACTOR's Service Area is acquired by CITY through annexation, subject to the requirements of Public Resources Code section 49520, CONTRACTOR agrees to provide Collection Services in such annexed area in accordance with the provisions and service rates set forth in this Agreement. Such Collection Services must begin within five (5) Work Days of receipt of written notice from CITY. CONTRACTOR may not begin Collection Service without written authorization from CITY.

6.04 Route Map Update. CONTRACTOR must revise the Service Unit route maps to show the addition of Service Units added due to annexation and must provide such revised maps to the Agreement Administrator as requested.

ARTICLE 7. SFD Collection Services

7.01 SFD Collection Services. The SFD Collection Services are governed by the following terms and conditions:

7.01.1 Conditions of Service. CONTRACTOR must provide SFD Collection Service to all SFD Service Units in the Service Area whose SFD Garbage is properly containerized in Garbage Carts; Recyclable Materials are properly containerized in Recycling Carts, except as set forth in Section 7.09; Organic Wastes are properly containerized in Organic Waste Carts, except as set forth in Sections 7.08 or 7.09; where the Solid Waste carts have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to CONTRACTOR's Collection crew and vehicle. The standard level for an SFD Service Unit shall be approximately one (1) 96-gallon Garbage Cart, one (1) 96-gallon Recycling Cart, and one (1) 96-gallon Organic Waste Cart. Optional 32- or 64-gallon Carts shall be provided at the Service Recipient's request. The 32- and 64-gallon Carts shall be set at the same Maximum Service Rate for 64-gallon Carts.

7.02 On-Premises Service. Notwithstanding any term or definition set forth in this Agreement, CONTRACTOR must provide on-premises Collection of SFD Solid Waste to an SFD Service Unit as follows:

7.02.1 At no additional cost to the SFD Service Unit. SFD Service Units where all adult Service Recipients residing therein have disabilities that prevent them from setting their Solid Waste Cart at the curb for Collection, and if a request for on-premises service has been made.

7.02.2 At an additional cost to the SFD Service Unit. CONTRACTOR must provide on-premises service to SFD Service Recipients on a subscription basis and may charge an additional Service Rate as specified in **Exhibit 1**.

7.02.3 Collection Day. CONTRACTOR must provide On-Premises Service Collection on the same Work Day that curbside Collection would otherwise be provided to the SFD Service Unit.

7.03 Frequency and Scheduling of Service. Except as set forth in Section 7.09, SFD Collection Service must be provided one (1) time per week on a scheduled route basis. SFD Collection Service must be scheduled so that all SFD Service Units receive SFD Garbage Collection Service, SFD Recyclable Material Collection Service, and SFD Organic Waste Collection Service on the same Work Day.

7.04 Hour and Days of Collection. SFD Collection Service must be provided Monday through Friday, commencing no earlier than 6:00 a.m. and terminating no later than 6:00 p.m. The hours, day, or both of Collection may be extended due to extraordinary circumstances or conditions with the prior verbal or written consent of the Agreement Administrator.

7.05 Manner of Collection. The CONTRACTOR must provide SFD Collection Service with as little disturbance as possible and must leave any Solid Waste Cart(s) in an upright position at the same point it was collected without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

7.05.1 CONTRACTOR's employees providing SFD Collection Service must follow the regular walk for pedestrians while on private property and may not trespass nor cross property to the adjoining premises unless the occupant or owner of both properties has given permission. Care should be taken to prevent damage to property, including flowers, shrubs, and other plantings.

7.05.2 Replacement of Carts. CONTRACTOR's employees must take care to prevent damage to Carts by unnecessary rough treatment. However, any Cart damaged by the CONTRACTOR must be replaced by CONTRACTOR, at CONTRACTOR's expense, within five (5) Work Days at no cost or inconvenience to the Service Recipient.

7.05.2.1 Upon notification to CONTRACTOR by CITY or a Service Recipient that the Service Recipient's Cart(s) has been stolen or damaged beyond repair through no fault of CONTRACTOR, CONTRACTOR must deliver a replacement Cart(s) to such Service Recipient within five (5) Work Days. CONTRACTOR must maintain records documenting all Cart replacements occurring on a monthly basis.

7.05.2.2 Each Service Recipient is entitled to the replacement of one (1) damaged by no fault of Service Recipient, lost, destroyed, or stolen Cart every ten (10) years during the life of this Agreement at no cost to the Service Recipient. Except in the case of a Cart that must be replaced

because of damage caused by CONTRACTOR or in the case where CONTRACTOR elects to replace a Cart rather than repair it on-site, CONTRACTOR will be compensated for the cost of those replacements in excess of one (1) per type of Cart per Service Recipient every ten (10) years during the term of the Agreement, in accordance with the "Cart Exchange" Service Rate set forth in **Exhibit 1**, or as may be adjusted by the CITY from time to time as provided under this Agreement.

7.05.2.3 CONTRACTOR understands and agrees that this provision is intended to be applied on a per Cart type, individual Service Recipient basis and accordingly each Service Recipient could receive up to three (3) replacement Carts, one (1) of each type, every ten (10) years during the term of the Agreement.

7.05.2.4 CONTRACTOR must comply with CalRecycle container requirements as they may apply during the term of this Agreement. If any such changes are adopted after the Effective Date that results in CONTRACTOR being required to replace containers before they have been fully depreciated, CONTRACTOR will be eligible for additional compensation in accordance with Section 23.01.1

7.05.3 Repair of Garbage, Recycling and Organic Waste Carts. CONTRACTOR is responsible for the repair of Carts, including but not be limited to, hinged lids, wheels and axles. Within five (5) Work Days of notification by the CITY or a Service Recipient of the need for such repairs, CONTRACTOR must repair the Cart or if necessary, remove the Cart for repairs and deliver a replacement Cart to the Service Recipient.

7.05.4 Cart Exchange. Upon notification to CONTRACTOR by CITY or a Service Recipient that a change in the size of a Cart is requested, CONTRACTOR must deliver such Cart to such Service Recipient within five (5) Work Days. Each SFD Service Unit is eligible to receive one (1) free Cart exchange per Calendar Year during the term of this Agreement with a total of five (5) Carts being exchanged. Accordingly, CONTRACTOR will be compensated only for the cost of those exchanges in excess of one (1) occurrence per Calendar Year for those SFD Service Units receiving different Cart sizes, in accordance with the "Cart Exchange" service rate as set forth in **Exhibit 1** or as may be adjusted this Agreement.

7.05.5 Additional Garbage Cart Request. Upon notification to the CONTRACTOR by CITY or a Service Recipient that additional Carts for Garbage are requested, CONTRACTOR must deliver such Carts to such Service Recipient within five (5) Work Days, at the rate set forth in **Exhibit 1**.

7.05.6 Additional Recyclable Materials or Organic Waste Carts. For those Service Recipients utilizing 96 gallon Recyclable Materials Carts or 96 gallon Organic Waste Carts, CONTRACTOR must provide up to one (1) additional Recyclable Materials Cart and up to one (1) additional Organic Waste Carts to SFD Service Recipients within five (5) days of request at no additional cost provided that additional Carts are used by SFD Service Recipients for the purposes of setting out additional Recyclable Materials or Organic Waste for regular weekly SFD Recycling or Organic Waste Collection Service. CONTRACTOR will be compensated for the cost of additional Carts requested in excess of two (2) Recyclable Materials or Organic Waste Carts as set forth in **Exhibit 1** or as may be adjusted under this Agreement.

7.05.7 Ownership of Carts. Ownership of Carts is vested in the CONTRACTOR.

7.06 SFD Garbage Collection Service. This service is governed by the following terms and conditions:

7.06.1 Non-Collection. CONTRACTOR is not required to collect any Residential Garbage that is not placed in a Garbage Cart. In the event of non-collection, CONTRACTOR will follow the steps set forth in Section 3.10.

7.06.2 Disposal Facility. Except as set forth below, all Residential Garbage Collected as a result of performing SFD Garbage Collection Services must be transported to, and disposed of, at the Disposal Facility. In the event the Disposal Facility is closed on a Work Day, CONTRACTOR must transport and dispose of the Residential Garbage at another legally permitted disposal facility. Failure to comply with this provision will result in the levy of an administrative charge as specified in this Agreement and may result in the CONTRACTOR being in default under this Agreement.

7.07 SFD Recycling Service. This service is governed by the following terms and conditions:

7.07.1 Overages. Corrugated cardboard that will not fit inside the Recyclable Materials Cart may be placed beside the Recycling Cart beginning December 26th through the second Friday in January each year during the term of this Agreement.

7.07.2 Material Recycling Facility. Subject to Section 3.09, all Recyclable Materials Collected as a result of performing recycling services must be delivered to the Material Recycling Facility. Failure to comply with this provision will result in the levy of an administrative charge as specified in this Agreement and may result in CONTRACTOR being in default under this Agreement.

7.07.2.1 Recycling - Changes to Services. Should changes in Applicable Law arise that necessitate any additions or deletions to the services described in this Section 7.07, including the type of items included as Recyclable Materials, the parties will negotiate any necessary cost changes and will enter into an Agreement amendment covering such modifications to the services to be performed and the compensation to be paid before undertaking any changes or revisions to such services.

7.08 SFD Organic Waste Collection Service. This service is governed by the following terms and conditions:

7.08.1 Starting July 1, 2021 CONTRACTOR's SFD Organic Waste Collection Service is required to include only Green Waste to comply with AB 1594. However, CONTRACTOR must expand the SFD Organic Waste Collection Service to include Food Waste and Other Organics as part of the SFD Organic Waste Collection Services by July 1, 2022, or as may be required by CalRecycle to comply with SB 1383. Collected Organic Waste shall be processed at a properly permitted Organic Waste Processing Facility.

7.08.2 CONTRACTOR must comply with CalRecycle collection frequency requirements as they may apply during the term of this Agreement. In the event such required changes to

collection frequency that cause CONTRACTOR to incur additional collection costs, CONTRACTOR is entitled to receive additional compensation in accordance with Section 23.01.1.

7.08.3 Organic Waste Processing Services. CONTRACTOR must ensure that all Organic Waste Collected pursuant to this Agreement is diverted from the landfill in accordance with AB 939, AB 1826, AB 1594, SB 1016 and SB 1383, and any subsequent or other Applicable Law.

7.08.4 CONTRACTOR must ensure that the Organic Waste Collected pursuant to this Agreement is not disposed of in a landfill, except for residue resulting from processing.

7.08.5 Organic Waste Processing Facility. CONTRACTOR must deliver all Collected Organic Waste to a CITY approved fully permitted Organic Waste Processing Facility or a fully permitted Organic Waste transfer station. All expenses related to Organic Waste processing and marketing will be the sole responsibility of CONTRACTOR.

7.08.6 Holiday Tree Collection. CONTRACTOR must Collect Holiday Trees set out at the curb for Collection beginning December 26th each year through the second Friday in January during the term of this Agreement. CONTRACTOR must deliver the Collected Holiday Trees to an appropriate facility for processing. This annual service will be provided at no additional charge to the SFD Service Recipient. CONTRACTOR is not required to divert Holiday Trees with tinsel, flocking or ornaments.

7.09 SFD Large Item Collection Service. This service is governed by the following terms and conditions:

7.09.1 Conditions of Service. CONTRACTOR must provide SFD Large Item Collection Service to all SFD Service Units in the Service Area whose Large Items have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to CONTRACTOR's Collection crew and vehicle. Up to four (4) times per Calendar Year, the Service Recipient will be limited to the equivalent of three (3) cubic yard of uncontainerized Solid Waste, or six (6) large items, or twenty (20) 32-gallon bags at no additional cost or expense. For subsequent collection in any Agreement Year, the CONTRACTOR shall receive compensation from the Service Recipient at the rate for such service as set in **Exhibit 1**.

7.09.2 Frequency of Service. SFD Large Item Collection Service must be provided within three (3) Work Days of receipt of the request. CONTRACTOR will use good faith efforts to collect Large Items on the regular Collection day if the request is received at least forty-eight (48) hours in advance. The Service Recipient may not intentionally commingle residential Large Items with other Solid Waste.

7.09.3 Large Items Containing Freon. In the event CONTRACTOR Collects Large Items that contain Freon, CONTRACTOR must handle such Large Items in a manner such that the Large Items are not subject to regulation as hazardous waste under applicable state and federal laws or regulations.

7.09.4 Maximum Reuse and Recycling. CONTRACTOR must dispose of Large Items collected from Service Units pursuant to this Agreement in accordance with the following hierarchy:

- 7.09.4.1 Reuse as is (where energy efficiency is not compromised).
- 7.09.4.2 Disassemble for reuse or Recycling.
- 7.09.4.3 Recycle.
- 7.09.4.4 Disposal.

7.09.5 CONTRACTOR may not landfill such Large Items unless the Large Items cannot be reused or recycled.

7.09.6 CITY Direction of Large Items. CITY reserves the right to direct CONTRACTOR to take Large Items Collected pursuant to this Section to a designated site or sites within 30 miles of City-center for the purpose of permitting persons who will reuse or recycle such Large Items to obtain the Large Items at no cost. CONTRACTOR has no obligation to dispose of the Large Items or large Item residue remaining at the directed site or sites after reusers and recyclers have removed reusable or recyclable Large Items.

7.10 Construction and Demolition Debris and Other Temporary Collection Service. This service is governed by the following terms and conditions:

7.10.1 Conditions of Service. Upon request of an SFD Service Unit, CONTRACTOR must provide Construction and Demolition Debris and Other Temporary Collection Service on a temporary on-call basis.

7.10.2 Charges for Bins or Roll-off Containers will be in accordance with **Exhibit 1**.

7.10.3 Frequency of Service. Construction and Demolition Debris and Other Temporary Collection Service must be provided within seven (7) Work Days of receipt of the request.

7.10.4 CONTRACTOR must provide SFD Service Units with Construction and Demolition Debris and Other Temporary Collection Service with as little disturbance as possible and without obstructing alleys, roadways, driveways, sidewalks, or mail boxes. CONTRACTOR may only place Roll-off Containers in strict adherence with CITY's right-of-way requirements and Municipal Code.

ARTICLE 8. Commercial and MFD Collection Services

8.01 Commercial Collection Service. Except as set forth below, CONTRACTOR must provide Commercial Collection Services to all Commercial Service Units in the Service Area, including those City Service Units listed in **Exhibit 3**. All provisions of this ARTICLE 8 shall also apply to MFD Service Units and MFD Collection Service. This service is governed by the following terms and conditions:

8.01.1 Provision of Service. CONTRACTOR must provide Commercial Collection Service to all Commercial Service Units in the Service Area whose Solid Waste are properly containerized in Bins, Carts, or Roll-off Containers as appropriate where the Carts, Bins, or Roll-off Containers are accessible as set forth in Section 8.01.4. The size of the container and the frequency (above the minimum) of collection will be determined between the Service Recipient and CONTRACTOR. However, the size and frequency must be sufficient to provide that no Solid Waste need be placed outside the Cart, Bin, or Roll-off Container. The base Commercial Garbage Collection Service will include Commercial Recycling Service as described in Section 8.03.2 below, and Commercial Organic Waste Collection Service as described in Section 8.04.2 below, at no additional cost to the Service Recipient.

8.01.2 Required Capacity. CONTRACTOR must provide Commercial Recycling Service and Commercial Organic Waste Collection Service to all Commercial Service Units in the Service Area. For each Service Unit, CONTRACTOR must provide a minimum capacity of Commercial Recycling Service and Commercial Organic Waste Collection Service at no additional cost, as required in Sections 8.03.2 and 8.04.2. For those Commercial Units which need more capacity than the minimum standard, CONTRACTOR may charge the Collection Service Rates as defined in **Exhibit 1**.

8.01.3 Hours of Collection. Commercial Collection Service must be provided, commencing no earlier than 4:00 a.m., and terminating no later than 6:00 p.m., Monday through Saturday. The hours of Collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the Agreement Administrator.

8.01.4 Accessibility. CONTRACTOR must collect all Carts, Bins or Roll-Off Containers that are readily accessible to CONTRACTOR's crew and vehicles and not blocked. However, CONTRACTOR must provide "push services" as necessary during the provision of Commercial Collection Services for the Service Rate set forth in **Exhibit 1**. Push services include, but are not limited to, dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location. CONTRACTOR may charge an extra pickup fee for the Service Rate set forth in **Exhibit 1** where it is required to return to the Customer location to service the Cart, Bin or Roll-off Container because access was blocked.

8.01.5 Manner of Collection. CONTRACTOR must provide Commercial Collection Service with as little disturbance as possible and must leave any Bin, Cart, or Roll-Off Container at the same point it originally located without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

8.01.5.1 Purchase and Distribution of Bins and Carts for New Commercial Service Units. CONTRACTOR must also distribute Bins, Carts or Roll-off Containers to new Commercial Service Units that are added to CONTRACTOR's Service Area during the term of this Agreement. The size of the Bins, Carts or Roll-Off Containers and the combination of Bins, Carts or Roll-Off Containers to be distributed as requested by the Service Recipient and the distribution must be completed within five (5) Work Days of receipt of the request for service.

8.01.6 Replacement of Bins and Carts. CONTRACTOR's employees must avoid damage to Bins or Carts by unnecessary rough treatment. Any Bin or Cart damaged by the CONTRACTOR

must be replaced by CONTRACTOR, at CONTRACTOR's expense, within five (5) Work Days at no cost or inconvenience to the Service Recipient.

8.01.6.1 Each Commercial Service Unit is entitled to the replacement of one (1) lost, destroyed, or stolen Bin or Cart once each ten (10) years of the term of this Agreement at no cost to the Service Unit, except where loss or damage is caused by the Service Recipient. Accordingly, CONTRACTOR will be compensated for the cost of those replacements in excess of one (1) Bin or Cart per Commercial Service Unit during each ten (10) years of the term Agreement, in accordance with the "Cart or Bin Exchange" Service Rate, as appropriate, set forth in **Exhibit 1**. CONTRACTOR must deliver a replacement Bin or Cart to such Service Unit within five (5) Work Days.

8.01.6.2 CONTRACTOR must comply with CalRecycle container requirements as they may apply during the term of this Agreement. If any such changes are adopted after the Effective Date that results in CONTRACTOR being required to replace containers before they have been fully depreciated, CONTRACTOR will be eligible for additional compensation in accordance with Section 23.01.1.

8.01.7 Repair of Bins and Carts. CONTRACTOR is responsible for repair of Bins and Carts. Within five (5) Work Days of notification by CITY or a Service Recipient of the need for such repairs, CONTRACTOR must repair the Bin or Cart or if necessary, remove the Bin or Cart for repairs and deliver a replacement Bin or Cart to the Service Recipient. Bin or Cart repair also includes the removal of graffiti from the Bin or Cart.

8.01.8 Bin and Cart Exchange. Upon notification to CONTRACTOR by CITY or a Service Recipient that a change in the size, or number of the Bins or Carts is required, CONTRACTOR must deliver such Bins or Carts to such Service Recipient within five (5) Work Days. Each Commercial Service Unit is eligible to receive one (1) free Bin or Cart exchange per Calendar Year during the term of this Agreement. CONTRACTOR is allowed to charge the Commercial Service Unit for the cost of those exchanges in excess of one (1) Bin or Cart exchange per Calendar Year, in accordance with the appropriate "Bin or Cart Exchange" service rate set forth in **Exhibit 1** as may be adjusted by CITY under this Agreement. Additional Carts or Bins or different size Carts and Bins are subject to the applicable Service Rate set forth in **Exhibit 1**.

8.01.9 Ownership of Bins. Ownership of Carts, Bins, and Roll-off Containers distributed by CONTRACTOR is vested in CONTRACTOR.

8.01.10 Ownership of Carts. Ownership of Carts distributed by the CONTRACTOR is vested in CONTRACTOR.

8.01.11 Cleaning of Bins and Carts. Once each Calendar Year, if requested by the Commercial Service Unit or if CITY requests to have a Bin or Cart cleaned or repaired, CONTRACTOR must clean all Bins and Carts at the Commercial Service Unit's premises, or must replace the dirty Bins and Carts with clean Bins and Carts. This service must be provided at no charge to the Commercial Service Unit, so long as the Service Recipient does not request the service more than once per Calendar Year. In addition, regardless of whether or not this cleaning is requested by the Service Unit, CONTRACTOR will

ensure that all Carts and Bins are cleaned on an as-needed basis so as to maintain a clean appearance and proper function. Any Bin or Cart cleanings cannot be done in a manner that results in water entering the CITY's storm drain system. Additional cleanings beyond once each Calendar Year will be subject to the Service Rate set forth in **Exhibit 1**.

8.02 Commercial and MFD Garbage Collection Service.

8.02.1 Conditions of Service. CONTRACTOR must provide Commercial and MFD Garbage Collection Service to all Commercial and MFD Service Units in the Service Area whose Commercial or MFD Garbage is properly containerized in Garbage Carts, Bins, or Roll-off Containers, where the Garbage Carts, Bins, or Roll-off Containers are accessible.

8.02.2 Size and Frequency of Service. This service must be provided as deemed necessary and determined between CONTRACTOR and the Commercial or the MFD Service Unit, but such service must be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Commercial or the MFD Service Unit and CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Garbage Bin, Cart, or Roll-off Container at the option of the Commercial or MFD Service Unit. The size of the container and the frequency of Collection will be determined between the Commercial or the MFD Service Unit and CONTRACTOR. However, size and frequency must be sufficient to provide that no Commercial or MFD Garbage need be placed outside the Bin, Cart or Roll-Off Container. CONTRACTOR must provide containers as part of the Commercial or MFD Collection Service Rates set forth in **Exhibit 1**, however, Commercial or MFD Service Units may own their Garbage Bin or Roll-Off Containers provided that the Commercial or the MFD Service Unit is completely responsible for its proper maintenance and that such Bin or Roll-Off Container must be of a type that can be serviced by the CONTRACTOR's equipment.

8.02.3 Non-Collection. CONTRACTOR is not required to Collect any Commercial or MFD Solid Waste that is not placed in a Cart, Bin, or Roll-off. In the event of non-collection due to Overage, CONTRACTOR must follow the steps as set forth in Section 3.10.

8.02.4 Disposal Facility. All Commercial and MFD Garbage collected as a result of performing Commercial and MFD Garbage Collection Services must be transported to, and disposed of, at the Disposal Facility. In the event the Disposal Facility is closed on a Work Day, CONTRACTOR must transport and dispose of Commercial and MFD Garbage at another legally permitted disposal facility. Failure to comply with this provision will result in the levy of an administrative charge as specified in this Agreement and may result in CONTRACTOR being in default under this Agreement.

8.03 Commercial and MFD Recycling Service. This service is governed by the following terms and conditions:

8.03.1 Conditions of Service. CONTRACTOR must provide Commercial Recycling Service to all Commercial Service Units in the Service Area whose Recyclable Materials are properly containerized in Recycling Bins, Recycling Carts, or Recycling Roll-off Containers except as set forth below, where the Recycling Bins or Carts are accessible. CONTRACTOR will charge for collection of Recyclable

Materials collected in Carts, Bins, or Roll-off Containers at the rates set forth in **Exhibit 1**. Commercial Recycling Collection will occur Monday through Friday, and on Saturdays upon request and as necessary.

8.03.2 Base Commercial Recycling Service. All Commercial Service Recipients subscribing to Commercial Garbage Collection Service must receive weekly collection of the equivalent volume of one (1) 96-gallon Recycling Cart per Service Recipient at no additional cost. This equivalent volume may be provided in the form of up to two (2) smaller Cart sizes, if requested by the Service Recipient and/or to help meet space constraints. In situations where shared service is provided, the equivalent volume of one (1) 96-gallon Recycling Cart per individual Commercial entity that is sharing service must be provided at no additional cost, and the actual configuration of Recycling Cart and/or Bin sizes to be provided will be based on the total equivalent volume and configured in a manner determined by the Service Recipient in consultation with CONTRACTOR.

8.03.3 Base MFD Recycling Service. All MFD Service Recipients subscribing to MFD Garbage Collection Service must receive weekly collection of the equivalent volume of one (1) 32-gallon Recycling Cart per Service Recipient at no additional cost. In situations where shared service is provided, the equivalent volume of one (1) 32-gallon Recycling Cart per individual MFD entity that is sharing service must be provided at no additional cost, and the actual configuration of Recycling Cart and/or Bin sizes to be provided will be based on the total equivalent volume and configured in a manner determined by the Service Recipient in consultation with CONTRACTOR.

8.03.4 Size and Frequency of Service. This service will be provided as deemed necessary and determined between CONTRACTOR and the Service Recipient, but such service must be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Service Recipient and CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Bin, Cart, or Roll-off Container at the option of the Service Recipient. The size of the container and the frequency (above the minimum) of Collection will be determined between the Service Recipient and CONTRACTOR. However, size and frequency must be sufficient to provide that no Recyclable Materials need be placed outside the Bin, Cart, or Roll-off Container. CONTRACTOR may charge for Commercial or MFD Recycling Services (above the minimum 96 or 32 gallon, respectively, Recyclable Materials Cart requirement as established in Sections 8.03.2 and 8.03.3 above) and must provide containers as a bundled service as part of the Commercial or MFD Collection Service rates set forth in **Exhibit 1**, however, Service Recipients may own their Bin or Roll-Off Container provided that the Service Recipient is completely responsible for its proper maintenance and such Bin or Roll-Off Container must be of a type that can be serviced by CONTRACTOR's equipment.

8.03.5 Material Recovery Facility. All Recyclable Materials Collected as a result of performing Recycling Services must be delivered to the Material Recovery Facility. Failure to comply with this provision will result in the levy of an administrative charge as specified in this Agreement and may result in CONTRACTOR being in default under this Agreement.

8.03.6 Recycling - Changes to Work. Should changes in law arise that necessitate any additions or deletions to the work described herein including the type of items included as Recyclable

Materials, the parties will negotiate any necessary cost changes and will enter into an Agreement amendment covering such modifications to the work to be performed and the compensation to be paid before undertaking any changes or revisions to such work.

8.03.7 Compliance with AB 341. CONTRACTOR will provide Commercial Recycling Service in a manner to exceed compliance with AB 341, as it may be amended from time to time. Starting January 1, 2021 and each January 1st thereafter, CONTRACTOR will notify all Commercial Service Units of the requirements to comply with the law. CONTRACTOR must provide the volume of collection service that all Commercial Service Units in order to be in full compliance with the law. CONTRACTOR will conduct in-person outreach to all non-participating commercial covered generators a minimum of once per calendar year.

8.03.8 Additional Recycling Bins, Carts or Roll-Off Containers. CONTRACTOR must provide additional Commercial or MFD Recycling Bins and Carts to Commercial or MFD Service Recipients above the minimum requirements within five (5) days of request and may charge for such additional capacity set forth in **Exhibit 1** provided that additional Bins, Carts or Roll-Off Containers are used by Commercial or MFD Service Recipients for the purposes of setting out additional Recyclable Materials for regular weekly Recycling Service.

8.04 Commercial Organic Waste Collection Service. This service is governed by the following terms and conditions:

8.04.1 Conditions of Service. CONTRACTOR must provide Commercial and MFD Organic Waste Collection Service to all Commercial and MFD Service Units in the Service Area whose Organic Waste is properly containerized in Organic Waste Bins or Organic Waste Carts, except as set forth below, where the Organic Waste Bins or Carts are accessible. CONTRACTOR will charge for collection of Organic Waste collected in Carts or Bins at the rate set forth in **Exhibit 1**. Commercial and MFD Organic Waste Collection will occur Monday through Friday, and on Saturdays upon request and as necessary.

CONTRACTOR must comply with CalRecycle collection frequency requirements as they may apply during the term of this Agreement. If any such changes to collection frequency are adopted after July 1, 2021 that result in CONTRACTOR being allowed to reduce the frequency of Garbage or Organic Waste Collection, or otherwise cause CONTRACTOR to reduce its collection costs as a result in a change in Garbage or Organic Waste collection frequency, CONTRACTOR must provide CITY with its estimate of reduced its costs and shall make adjustments to the Maximum Service Rates.

8.04.2 Base Commercial Organic Waste Service. All Commercial Service Recipients subscribing to Commercial Garbage Collection Service must receive weekly collection of the equivalent volume of one (1) 64-gallon Organic Waste Cart per Service Recipient at no additional cost. In situations where shared service is provided, the equivalent volume of one (1) 64-gallon Organic Waste Cart per individual Commercial entity that is sharing service must be provided at no additional cost, and the actual configuration of Organic Waste Cart and/or Bin sizes to be provided will be based on the total equivalent volume and configured in a manner determined by the Service Recipient in consultation with CONTRACTOR. CONTRACTOR may charge for Commercial Organic Waste Collection Services (above

the minimum 64 gallon Organic Waste Cart) and must provide containers as a bundled service as part of the Commercial Collection Service rates set forth in **Exhibit 1**, however, Service Recipients may own their Bin provided that the Service Recipient is completely responsible for its proper maintenance and such Bin must be of a type that can be serviced by CONTRACTOR's equipment.

8.04.3 Base MFD Organic Waste Service. All MFD Service Recipients subscribing to MFD Garbage Collection Service must receive weekly collection of the equivalent volume of one (1) 32-gallon Organic Waste Cart per Service Recipient at no additional cost. In situations where shared service is provided, the equivalent volume of one (1) 32-gallon Organic Waste Cart per individual MFD entity that is sharing service must be provided at no additional cost, and the actual configuration of Organic Waste Cart and/or Bin sizes to be provided will be based on the total equivalent volume and configured in a manner determined by the Service Recipient in consultation with CONTRACTOR. CONTRACTOR may charge for MFD Organic Waste Collection Services (above the minimum 32 gallon Organic Waste Cart) and must provide containers as a bundled service as part of the MFD Collection Service rates set forth in **Exhibit 1**, however, Service Recipients may own their Bin provided that the Service Recipient is completely responsible for its proper maintenance and such Bin must be of a type that can be serviced by CONTRACTOR's equipment

8.04.4 Size and Frequency of Service. This service will be provided as deemed necessary and determined between CONTRACTOR and the Service Recipient, but such service must be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Service Recipient and CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Bin or Cart at the option of the Service Recipient. The size of the container and the frequency (above the minimum) of Collection will be determined between the Service Recipient and CONTRACTOR. However, size and frequency must be sufficient to provide that no Organic Waste needs be placed outside the Bin or Cart. A Service Recipient may own their Bin provided that the Service Recipient is completely responsible for its proper maintenance and such Bin must be of a type that can be serviced by the CONTRACTOR's equipment.

8.04.5 Organic Waste Processing Facility. All Organic Waste Collected as a result of performing Commercial and MFD Organic Waste Collection Services must be delivered to the Organic Waste Processing Facility. Failure to comply with this provision will result in the levy of an administrative charge as specified in this Agreement and may result in CONTRACTOR being in default under this Agreement.

8.04.6 MFD Holiday Tree Collection. CONTRACTOR must Collect Holiday Trees set out for Collection at one centralized location within an MFD complex no less than one time per week beginning December 26th each year through the second Friday in January during the term of this Agreement. As an alternative, CITY and CONTRACTOR may mutually agree upon a centralized location within the CITY to collect Holiday Trees from MFD Service Recipients. CONTRACTOR must deliver the Collected Holiday Trees to an appropriate facility for processing. This annual service will be provided at no additional charge to the MFD Service Recipient. CONTRACTOR is not required to divert Holiday Trees with tinsel, flocking or ornaments.

8.04.7 Organic Waste - Changes to Services. Should changes in law arise that necessitate any additions or deletions to the services described in this Section 8.04 including the type of items included as Organic Waste, the parties will negotiate any necessary cost changes and will enter into an Agreement amendment covering such modifications to the services to be performed and the compensation to be paid before undertaking any changes or revisions to such services.

8.04.8 Compliance with AB 1826 and SB 1383. The CONTRACTOR will provide Commercial and MFD Recycling and Organic Service in a manner to exceed compliance with AB 1826 and SB 1383, as they may be amended from time to time. Starting January 1, 2021 and each January 1st thereafter, CONTRACTOR will notify all Commercial and MFD Service Units of the requirements to comply with the law. CONTRACTOR must provide the volume of collection service that all Commercial and MFD Service Units in order to be in full compliance with the law. In conjunction with the CITY's ordinance supporting full compliance with AB 341 by Commercial Service Units (i.e., "generators"), CONTRACTOR will conduct in-person outreach to all non-participating commercial covered generators a minimum of once per calendar year.

8.04.9 Additional Organic Waste Bins or Carts. CONTRACTOR must provide additional Commercial or MFD Organic Waste Bins and Carts to Commercial or MFD Service Recipients above the minimum requirements within five (5) Work Days of request and may charge for such additional capacity set forth in **Exhibit 1** provided that additional Bins and Carts are used by Commercial or MFD Service Recipients for the purposes of setting out additional Organic Waste materials for regular weekly Organic Waste Collection Service.

8.05 MFD Large Item Collection Service. This service is governed by the following terms and conditions:

8.05.1 Conditions of Service. CONTRACTOR shall provide Large Item Collection Services to MFD complexes in a manner and frequency as may be requested by the MFD complex management up to four (4) times per Calendar Year. Each collection will be limited to the equivalent of up to one-half (0.5) cubic yard of Solid Waste per individual unit in the MFD complex at no additional cost or expense. Any such MFD Large Item Collection Services must be arranged directly between CONTRACTOR and the MFD complex management or ownership. No individual MFD Service Unit may request or arrange for MFD Large Item Collection Services. For subsequent collection in any Agreement Year, the CONTRACTOR shall receive compensation from the Service Recipient at the rate for such service as set in **Exhibit 1**.

8.05.2 Frequency of Service. MFD Large Item Collection Service must be provided within three (3) Work Days of receipt of the request. CONTRACTOR will use good faith efforts to collect Large Items on the regular Collection day if the request is received at least forty-eight (48) hours in advance. The Service Recipient may not intentionally commingle residential Large Items with other Solid Waste.

8.05.3 Maximum Reuse and Recycling. CONTRACTOR must dispose of Large Items collected from Service Units pursuant to this Agreement in accordance with the following hierarchy:

8.05.3.1 Reuse as is (where energy efficiency is not compromised).

8.05.3.2 Disassemble for reuse or Recycling.

8.05.3.3 Recycle.

8.05.3.4 Disposal.

8.05.4 CONTRACTOR may not landfill such Large Items unless the Large Items cannot be reused or recycled.

8.05.5 CITY Direction of Large Items. CITY reserves the right to direct CONTRACTOR to take Large Items Collected pursuant to this Section to a designated site or sites within 30 miles of City-center for the purpose of permitting persons who will reuse or recycle such Large Items to obtain the Large Items at no cost. CONTRACTOR has no obligation to dispose of the Large Items or large Item residue remaining at the directed site or sites after reusers and recyclers have removed reusable or recyclable Large Items.

8.06 Construction and Demolition Debris and Other Temporary Collection Service. This service is governed by the following terms and conditions:

8.06.1 Conditions of Service. Upon request of a Commercial Service Unit, CONTRACTOR must provide Construction and Demolition Debris and Other Temporary Collection Service on a temporary on-call basis.

8.06.2 Charges for Bin or Roll-off Containers must be in accordance with **Exhibit 1** of this Agreement.

8.06.3 Frequency of Service. Construction and Demolition Debris and Other Temporary Collection Service must be provided within seven (7) Work Days of receipt of the request.

8.06.4 CONTRACTOR must provide Commercial Service Units with Construction and Demolition Debris and Other Temporary Collection Service with as little disturbance as possible and without obstructing alleys, roadways, driveways, sidewalks, or mail boxes. CONTRACTOR may only place Roll-off Containers in strict adherence with CITY's right-of-way requirements and Municipal Code.

ARTICLE 9. City Services Provided by Contractor

9.01 CITY Collection Services. CITY Collection Services shall be provided at no cost to the CITY and shall be governed by the following terms and conditions:

9.01.1 Conditions of Service. CONTRACTOR shall provide Solid Waste Collection Services to all CITY Service Units as set forth in **Exhibit 3**, and as may be modified by written notice by the CITY as a CITY-directed change under Section 23.01, where the Containers are not blocked and are accessible by CONTRACTOR's collection vehicles. CONTRACTOR must provide CITY Collection Services in the same manner as service provided to Commercial Service Units in ARTICLE 8. Construction and Demolition Debris and Other Temporary Collection Service related to CITY construction or public works

projects undertaken on force account solely by CITY employees, shall be provided by CONTRACTOR at no cost to the CITY.

9.01.2 CONTRACTOR shall receive written permission from the CITY before placing any containers on CITY owned property for service, except that no such permission shall be needed to place Containers at locations specified in **Exhibit 3**.

9.01.3 CONTRACTOR shall limit the number of trips and the path of travel for collection vehicles in CITY parking lots.

9.02 City-Sponsored Events Service. Upon request by the CITY, CONTRACTOR shall provide delivery and pick-up of Containers, and Collection Services at up to fifteen (15) events that are sponsored, organized, or substantially supported by the CITY including, but not limited to, those specified in **Exhibit 2**, and as may be modified by written notice by the CITY at no cost to the CITY, but subject to the limitation in the last sentence of this Section 9.02. The Solid Waste collection and disposal plan for each event shall be developed by CONTRACTOR and submitted to the Agreement Administrator in writing for approval prior to each event. Current events are set forth on **Exhibit 2**, and as may be modified by written notice by the CITY. CITY may change or increase the number of the City-Sponsored Event receiving services, and the service levels provided at any City-Sponsored Events, by written notice to CONTRACTOR, as a CITY-directed change under Section 23.01.

9.03 Non-City Large Venue Event Collection Service. Upon request by a Non-City Large Venue Event, CONTRACTOR shall provide delivery and pick-up of Containers and Collection Services. The Solid Waste collection and disposal plan for each event shall be developed by CONTRACTOR in coordination with the event planner and submitted to the Agreement Administrator in writing for approval prior to each event. The CONTRACTOR shall receive compensation from the Non-City Large Venue Event at the rate for such service as set in **Exhibit 1**.

9.04 Residential Household Hazardous Waste (HHW), Electronic Waste (E-Waste), and Used Oil Drop-Off Program. CONTRACTOR will provide a permanent drop-off location within the City for the collection of HHW, E-Waste, Used Oil, and Used Oil Filters generated by SFD and MFD Service Recipients. The location of this permanent drop-off location will be mutually agreed upon by the CITY and CONTRACTOR.

9.04.1 HHW, E-Waste, and Used Oil Drop-off Location Hours. The drop-off location shall have responsible persons in charge and shall be open during normal business hours, 9:00 a.m. to 5:00 p.m. on regularly schedule Work Days (Monday through Saturday).

9.05 Clean-Up Days Events. CONTRACTOR shall provide Collection Services at Clean-Up Days Events at a maximum of four (4) per year upon request by CITY. Each event shall occur on a Saturday between the hours of 8:00 a.m. and 12:00 p.m. at a location selected by the CITY and shall be limited to SFD and MFD Service Recipients within the CITY. The Agreement Administrator shall notify CONTRACTOR in writing or e-mail not less than eight (8) weeks prior to the date of the Clean-Up Days Event. The services shall be provided in a manner that meets all needs of the Clean-Up Days Event. The

events shall be conducted by CONTRACTOR at no cost of any kind to the CITY. CONTRACTOR shall provide staffing to support CITY management at all times during the Clean-Up Days Events.

9.05.1 CONTRACTOR shall prepare and distribute to SFD and MFD Service Recipients Clean-Up Days Event notices no later than six (6) weeks prior to each event. At a minimum, the dates and hours of operation, locations of the collection sites, and acceptable materials for collection shall be included in the notices. CONTRACTOR may separately mail electronically transmit the notices, or provide the notices as billing inserts to each SFD and MFD Service Recipient. CONTRACTOR shall provide Spanish-translated notices upon request by the CITY. The costs of production, printing, mailing and all associated costs for the notices shall be borne by CONTRACTOR. CONTRACTOR shall also provide their information in digital format to the CITY.

9.05.2 CONTRACTOR shall require that each SFD and MFD Service Recipient turn in the notice to CONTRACTOR's staff at the collection site as proof of CITY residency as a condition to collection.

9.05.3 On the first (1) Working Day following each Clean-Up Days Event, CONTRACTOR shall remove and clean up any remaining materials left for collection.

9.06 Free Paper Shredding Events. Four (4) times per year, concurrent with a Clean-Up Days Event, at no additional cost to CITY or its residents, CONTRACTOR will conduct a free paper shredding event at the same location as the Clean-Up Days Event. At each event, all CITY residents will be permitted to deliver an unlimited amount of paper for shredding free of charge by CONTRACTOR. CONTRACTOR must arrange for all shredded paper generated by each event to be processed in such a manner so as to ensure the diversion of this material from landfilling.

9.07 Mulch or Compost Delivery. At no cost to the CITY, CONTRACTOR must provide CITY with up to 2,000 cubic yards of mulch or 1,000 cubic yards of compost materials (i.e., "Recovered Organic Materials"). CONTRACTOR must deliver mulch or compost materials at a time and location mutually agreeable between the CITY and CONTRACTOR. Delivered mulch or compost can be in bulk form or bagged.

ARTICLE 10. Collection Routes

10.01 Service Routes. CONTRACTOR must provide CITY with maps precisely defining Collection routes, together with the days and the times at which Collection will regularly commence.

10.02 Service Route Changes. CONTRACTOR must submit to CITY, in writing, any proposed route change (including maps thereof) not less than forty-five (45) calendar days prior to the proposed date of implementation. CONTRACTOR may not implement any route changes without the prior review of the Agreement Administrator. If the change will change the Collection day for a Service Recipient, CONTRACTOR must notify those Service Recipients in writing of route changes not less than fifteen (15) days before the proposed date of implementation.

10.02.1 Collection Route Audits. CITY reserves the right to conduct audits of CONTRACTOR's Collection routes. CONTRACTOR must cooperate with CITY in connection therewith, including permitting CITY employees or agents, designated by the Agreement Administrator, to ride in the Collection vehicles in order to conduct the audits. CONTRACTOR has no responsibility or liability for the salary, wages, benefits or worker compensation claims of any person designated by the Agreement Administrator to conduct such audits.

ARTICLE 11. Minimum Performance and Diversion Standards

11.01 Agreement Term Extension. In order to receive the Agreement term extension offer set forth in ARTICLE 2 of this Agreement, CONTRACTOR must meet or exceed the following annual minimum performance and diversion standards in each Agreement Year beginning July 1, 2021.

11.01.1 Performance Standards. CONTRACTOR must not have received assessment of Administrative Charges, as set forth in this Agreement more than \$50,000 in any one (1) Agreement Year.

11.01.2 Minimum Diversion Standards. CONTRACTOR must meet the requirements set forth in ARTICLE 5.

11.01.3 No Current Default. CONTRACTOR is not currently in default of the Agreement.

11.02 Billing Audit and Performance Reviews.

11.02.1 Selection and Cost. CITY may conduct billing audit and performance reviews ("reviews") of CONTRACTOR's performance during the term of this Agreement. The reviews will be performed by a qualified firm under Agreement to CITY. CITY will have the final responsibility for the selection of the firm but may seek and accept comments and recommendations from CONTRACTOR. CITY may conduct reviews at any time during the term of the Agreement, of the reviews described in Sections 11.02.1.1 through 11.02.1.2 below, and only if such reviews are conducted at the sole option of the CITY.

11.02.1.1 Full Reviews During Initial Term. CITY may conduct three (3) full reviews during the Initial Term of this Agreement. The first review will be scheduled to occur within the first two (2) years of the Agreement, for anticipated completion by June 31, 2023. The second Performance Review will be scheduled to occur at the CITY's discretion within the first ten (10) years of the Agreement, for anticipated completion by June 31, 2031. A subsequent review may be scheduled at the CITY's discretion, with up to one (1) Performance Review occurring prior to CITY approving an extension to the term of this Agreement as described in Sections 2.02 and 2.03.

11.02.1.2 Full Review During Extension Period. In the event that CONTRACTOR is granted an extension to the term of this Agreement as described in Section 2.02, CITY may conduct one (1) additional full review at CONTRACTOR's expense during the five (5) year extension period. The purpose of these full reviews is described in Section 11.02.2. For each of these full reviews, CONTRACTOR will be responsible for up to **Seventy-Five Thousand Dollars (\$75,000.00)** of the

reasonable cost. This amount will be escalated annually starting on July 1, 2022 and each July 1st thereafter, the maximum cost for the review will be adjusted by the adjustment process as established in Section 4.02.2

11.02.2 Purpose. The reviews will be designed to include, but are not limited to, verifying that Service Recipient billing rates have been properly calculated and they correspond to the level of service received by the Service Recipient; verifying that Franchise Fees, and other fees required under this Agreement have been properly calculated and paid to CITY; verifying CONTRACTOR's compliance with the reporting requirements and performance standards of this Collection Service Agreement; and verifying the diversion percentages reported by CONTRACTOR. CITY (or its designated consultant) may utilize a variety of methods in the execution of the performance review and billing audit, including analysis of relevant documents, on-site and field observations, and interviews. CITY (or its designated consultant) will review and document the items in the Agreement that require CONTRACTOR to meet specific performance standards, submit information or reports, perform additional services, or document operating procedures, that can be objectively evaluated. This information will be formatted in a "compliance checklist" with supporting documentation and findings tracked for each of the identified items. The review will specifically include a determination of CONTRACTOR's compliance with the diversion requirements of ARTICLE 5, and the public outreach and education requirements of ARTICLE 14. CITY (or its designated consultant) may review the Service Recipient's service functions and structure utilized by CONTRACTOR. This may include CONTRACTOR's protocol for addressing Service Recipient's complaints and service interruption procedures. Complaint logs may be reviewed, along with procedures and systems for tracking and addressing complaints. On-site and field observations by CITY (or its designated consultant) may include, but are not necessarily limited to:

- 11.02.2.1 Interviews and discussions with CONTRACTOR's administration and management personnel;
- 11.02.2.2 Review and observation of CONTRACTOR's customer service functions and structure;
- 11.02.2.3 Review of public education and outreach materials;
- 11.02.2.4 Interviews and discussions with CONTRACTOR's financial and accounting personnel;
- 11.02.2.5 Interviews with route dispatchers, field supervisors and managers;
- 11.02.2.6 Interviews with route drivers;
- 11.02.2.7 Interviews with vehicle maintenance staff and observation of maintenance practices; and
- 11.02.2.8 Review of on-route collection services, including observation of driver performance and collection productivity and visual inspection of residential routes before and after collection to evaluate Cart placement and cleanliness of streets.

11.02.3 CONTRACTOR's Cooperation. CONTRACTOR must cooperate fully with the review and provide all requested data, including operational data, financial data of the type described in Section 16.01, and other data reasonably requested by CITY within thirty (30) Work Days.

11.02.4 Additional Billing Audit and Performance Review. In the event that the Billing Audit and Performance Review concludes that CONTRACTOR is not in compliance with all terms and conditions of this Agreement and such non-compliance is material, CITY may conduct an Additional Billing Audit and Performance Review to ensure that CONTRACTOR has cured any such area of non-compliance. CONTRACTOR will be responsible for the cost of any such Additional Billing Audit and Performance Review, for a maximum cost of **Seventy-Five Thousand Dollars (\$75,000)** starting on July 1, 2022 and each July 1st thereafter, the maximum cost for the review will be adjusted by the by the adjustment process as established in Section 4.04.

11.03 City Requested Program Review. CITY reserves the right to require CONTRACTOR to periodically conduct reviews of the Collection Services programs, provided that such reviews are reasonable and can be accomplished at no additional cost to CONTRACTOR and without interfering with CONTRACTOR's operations. Such reviews could assess one or more of the following performance indicators: average volume of Recyclable Materials per setout per Service Recipient, average volume of Green Waste and/or Food Waste per setout per Service Recipients, participation level, contamination levels, etc. Prior to the program evaluation review, CITY and CONTRACTOR will meet and discuss the purpose of the review and agree on the method, scope, and data to be provided by CONTRACTOR.

11.04 Cooperation with Other Program Reviews. If CITY wants to collect program data, perform field work, conduct route audits to investigate Service Recipient participation levels and setout volumes and/or evaluate and monitor program results related to Garbage, Recyclable Materials and Organic Waste collected in CITY by CONTRACTOR, CONTRACTOR must cooperate with CITY or its agent(s) as reasonably requested by CITY, provided that such cooperation can be accomplished at no additional cost to CONTRACTOR and without interfering with CONTRACTOR's operations.

ARTICLE 12. Collection Equipment

12.01 Equipment Specifications.

12.01.1 General Provisions. All equipment used by CONTRACTOR in the performance of services under this Agreement must be of a high quality and comply with all Applicable Laws and meet or exceed all applicable air quality standards, including all applicable provisions of Merced Air Pollution Control District. The vehicles must be designed and operated so as to prevent Collected materials from escaping from the vehicles. Hoppers must be closed on top and on all sides with screening material to minimize Collected materials from leaking, blowing or falling from the vehicles. All trucks and containers must be leak resistant and must be operated to minimize spillage of liquids during Collection or in transit.

12.01.2 Large Items. Vehicles used for Collection of Large Items may not use compactor mechanisms or mechanical handling equipment that may damage reusable goods or release Freon or other gases from pressurized appliances.

12.01.3 Collection Vehicles. CONTRACTOR must use new collection vehicles at the start of this Agreement.

12.01.4 Collection Vehicle Size Limitations / Overweight Vehicle Charge. CONTRACTOR may not use any Collection vehicle for in violation of weight limitations set forth in Applicable Law. CONTRACTOR must report all instances of overweight vehicles to CITY on a monthly basis as part of its monthly CITY Reports submittal described in Section 16.02.1.1. CONTRACTOR may be assessed administrative charges as set forth Section 18.04 as a result of exceeding an overweight vehicle rate of ten percent (10%) in any month during the term of the Agreement. The overweight vehicle rate will be calculated as the total number of overweight collection vehicle instances during each month, divided by the total number of collection vehicle loads transported during the same corresponding month. Prior to collecting administrative charges for overweight vehicles, the CITY shall afford CONTRACTOR a reasonable opportunity to provide the Agreement Administrator documentation of the extraordinary circumstance that caused the overweight vehicles. Extraordinary circumstances in this particular case include, but may be limited to, heavy rains or high winds that caused excess Green Waste to be generated, rain to accumulate in open Collection Containers, or normal Collection routes to be delayed or shortened to extreme weather conditions. The Agreement Administrator shall have authority to consider CONTRACTOR's documentation and uphold and collect the assessed charge, to reduce the charge, or waive and dismiss the charge. The Agreement Administrator shall also have the authority to waive charges in advance of an anticipated, or in response to and actual, emergency event.

12.01.5 Registration; Inspection. All vehicles used by CONTRACTOR in providing Collection Services under this Agreement, except those vehicles used solely on CONTRACTOR's premises, are to be registered with the California Department of Motor Vehicles. In addition, each such vehicle must be inspected by the California Highway Patrol in accordance with Applicable Law. Within two (2) Work Days of a request from the Agreement Administrator, CONTRACTOR must provide CITY a copy of its vehicle maintenance log and any safety compliance report, including, but not limited to, any report issued under California Vehicle Code sections 34500 and following, as well as the biennial "BIT" inspections conducted by the California Highway Patrol.

12.01.6 Safety Markings All Collection equipment used by CONTRACTOR must have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and effective reflective markings. All such safety markings must be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time.

12.01.7 Vehicle Signage and Painting. Collection vehicles must be painted and numbered without repetition and must have CONTRACTOR's name, CONTRACTOR's customer service telephone number, and the number of the vehicle painted in letters of contrasting color, at least four (4) inches high, on each side and the rear of each vehicle. No advertising is permitted other than the name of CONTRACTOR, its logo and registered service marks except promotional advertisement of the Recyclable Materials and Organic Waste programs. CONTRACTOR must repaint all vehicles (including a vehicle's striping) during the term of this Agreement on a frequency not less often than every five (5) years, as necessary to maintain a positive public image, or as reasonably determined by the Agreement Administrator, beginning January 1, 2021.

12.01.8 Bin Signage, Painting, and Cleaning. All metal or plastic Bins of any service type furnished by CONTRACTOR must be either painted or galvanized. All metal or plastic Bins must display CONTRACTOR's name, CONTRACTOR's customer service telephone number, and the number of the Bin and must be kept in a clean and sanitary condition. In accordance with Section 8.01.11, the Bins provided by CONTRACTOR must be steam cleaned by CONTRACTOR as frequently as necessary so as to maintain them in a sanitary condition. Bins may be subject to periodic, unscheduled inspections by CITY and determination as to sanitary condition will be made by CITY. Bin cleanings beyond once each Calendar Year will be subject to the Service Rate set forth in **Exhibit 1**. Any and all steam cleaning or sanitizing of Bins, Carts, Compactors, or Roll-Off Containers by CONTRACTOR is not allowed within the CITY limits, unless approved by the Agreement Administrator.

12.01.9 Bins and Carts. CONTRACTOR must have new Garbage, Recycling and Organics Bins and Carts for all Service Recipients at the start of this Agreement.

12.02 Vehicle Certification. For each Collection vehicle used in the performance of services under this Agreement, CONTRACTOR must obtain a certificate of compliance (smog check) issued pursuant to Part 5 of Division 26 of the California Health and Safety Code (section 43000 and following) and regulations promulgated thereunder and/or a safety compliance report issued pursuant to Division 14.8 of the California Vehicle Code (section 34500 and following) and the regulations promulgated thereunder, as applicable to the vehicle. CONTRACTOR must maintain copies of such certificates and reports and must make such certificates and reports available for inspection upon request by the Agreement Administrator.

12.02.1 No later than January 1, 2021, CONTRACTOR must submit to the Agreement Administrator verification that each of the CONTRACTOR's Collection vehicles has passed the California Heavy Duty Vehicle Inspection. Thereafter, CONTRACTOR must cause each vehicle in CONTRACTOR's Collection fleet to be tested annually in the California Heavy Duty Inspection Program and must submit written verification to CITY upon request by the Agreement Administrator. CONTRACTOR may not use any vehicle that does not pass such inspection.

12.03 Equipment Maintenance. CONTRACTOR must maintain Collection equipment in a clean condition and in good repair at all times. All parts and systems of the Collection equipment must operate properly and be maintained in a condition satisfactory to CITY. CONTRACTOR must wash all Collection vehicles at least once a week.

12.04 Maintenance Log. CONTRACTOR must maintain a maintenance log for all Collection vehicles. The log must at all times be accessible to CITY by physical inspection upon request of the Agreement Administrator, and must show, at a minimum, each vehicle's CONTRACTOR assigned identification number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance of any additional maintenance, and description of additional maintenance performed.

12.05 Equipment Inventory. On or before January 1, 2021, and each January 1st through the Term of this Agreement, CONTRACTOR must provide to CITY an inventory of Collection vehicles and major equipment used by CONTRACTOR for Collection or transportation and performance of services under this Agreement. The inventory must indicate each Collection vehicle by CONTRACTOR assigned

identification number, DMV license number, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition, the decibel rating and the maintenance and rebuild status. CONTRACTOR must submit to the Agreement Administrator, either by fax or e-mail, an updated inventory each Calendar Year to the CITY or more often at the request of the Agreement Administrator. Each inventory must also include the tare weight of each vehicle. Each vehicle inventory must be accompanied by a certification signed by CONTRACTOR that all Collection vehicles meet the requirements of this Agreement.

12.06 Reserve Equipment. CONTRACTOR must have available to it, at all times, reserve Collection equipment which can be put into service and operation within one (1) hour of any breakdown. Such reserve equipment must correspond in size and capacity to the equipment used by the CONTRACTOR to perform the contractual duties.

ARTICLE 13. Customer Service

13.01 CONTRACTOR's Customer Service. All service inquiries and complaints from Service Recipients will be directed to CONTRACTOR. A representative of CONTRACTOR must be available to receive the complaints during normal business hours. All service complaints will be handled by CONTRACTOR in a prompt and efficient manner. In the case of a dispute between CONTRACTOR and a Service Recipient, the matter will be reviewed, and a decision made by the Agreement Administrator.

13.01.1 CONTRACTOR will utilize the Customer Service Log to maintain a record of all inquiries and complaints in a manner prescribed by CITY. CONTRACTOR must maintain a record of all inquiries and complaints for a minimum of three (3) years, available upon CITY request.

13.01.2 For those complaints related to missed Collections, where Containers are properly and timely set out, that are received by 12:00 noon on a Work Day, CONTRACTOR will return to the Service Unit address and Collect the missed materials before leaving the Service Area for the day. For those complaints related to missed Collections that are received after 12:00 noon on a Work Day, CONTRACTOR will have until the end of the following Work Day to resolve the complaint. For those complaints related to repair or replacement of Carts or Bins, the appropriate Sections of this Agreement will apply.

13.01.3 CONTRACTOR agrees that it is in the best interest of CITY that all Solid Waste be Collected on the scheduled Collection day. Accordingly, missed Collections will normally be Collected as set forth above regardless of the reason that the Collection was missed. However, in the event a Service Recipient requests missed Collection service more than two (2) times in any consecutive two (2) month period the Agreement Administrator will work with CONTRACTOR to determine an appropriate resolution to that situation. In the event CONTRACTOR believes any complaint to be without merit, CONTRACTOR will notify the Agreement Administrator, either by fax or e-mail. The Agreement Administrator will investigate all disputed complaints and render a decision.

13.01.4 CONTRACTOR's service and emergency telephone numbers must be accessible by a local (CITY) phone number. The telephone number(s) must be listed in the area's telephone directories under CONTRACTOR's name in the White Pages and Yellow Pages.

13.02 CONTRACTOR's Office. CONTRACTOR must maintain a Customer Service office within the City's Service Limits where complaints can be received. Such office must be equipped with sufficient telephones that all Collection Service related calls received during normal business hours are answered by an employee within five (5) rings, and must have responsible persons in charge during Collection hours and must be open during such normal business hours, 8:00 a.m. to 5:00 p.m. on Monday through Friday. CONTRACTOR must provide a local telephone number, and a telephone answering service or mechanical device to receive Service Recipient inquiries during those times when the office is closed. Calls received after normal business hours must be addressed the next Work Day morning.

CONTRACTOR shall keep records of all Service Recipient's calls for at least three (3) years, collected on a Calendar Year cycle. The CONTRACTOR must include the type of call (Complaint, compliment, Other), a summary of the call the time and date of the call, and if a complaint was made, the resolution to the complaint. A record of each month's calls will be reported as part of the quarterly report, as part of Section 16.03.2.5 of this Agreement. A record of each year's calls will be reported as a part of the Annual Report, as defined in Section 16.04.2.8 of this Agreement. These records will also be made available to the CITY upon request, as pursuant to Section 16.07 of this Agreement.

13.02.1 Emergency Contact. CONTRACTOR must provide the Agreement Administrator with an emergency phone number where the CONTRACTOR can be reached outside of the required office hours.

13.02.2 Multilingual/TDD Service. CONTRACTOR must at all times maintain the capability of responding to telephone calls in English and such other languages as CITY may direct. CONTRACTOR must at all times maintain the capability or responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

13.02.3 Service Recipient Calls. During office hours, CONTRACTOR must maintain a telephone answering system capable of accepting at least fifteen (15) incoming calls at one time. CONTRACTOR must record all calls including any inquiries, service requests and complaints into a customer service log.

13.02.4 All incoming calls will be answered within five (5) rings. Any call "on-hold" in excess of one and one-half (1.5) minutes must have the option to remain "on-hold" or request a "call-back" from a customer service Agreement Administrator. CONTRACTOR's customer service representatives must return Service Recipient calls. For all messages left before 3:00 p.m., all "call backs" must be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. For messages left after 3:00 p.m., all "call backs" must be attempted a minimum of one time prior to noon the next Work Day. CONTRACTOR must make minimum of three (3) attempts within one (1) Work Day of the receipt of the call. If CONTRACTOR is unable to reach the Service Recipient on the next Work Day, CONTRACTOR must send a postcard to the Service Recipient on the second Work Day after the call was received, indicating that the CONTRACTOR has attempted to return the call.

ARTICLE 14. CONTRACTOR Support Services

14.01 Public Outreach and Education Services. CONTRACTOR, at its own expense, must prepare, submit and implement an annual (Calendar Year) Public Education and Outreach Program beyond CITY's Public Education and Outreach Program. CONTRACTOR's initial Sustainability Plan is outlined in **Exhibit 6**. The proposed action plan must be submitted annually for CITY approval no later than August 1st for the next Calendar Year.

14.01.1 Sustainability Representative. The CONTRACTOR will collaborate with CITY staff to make available reasonable use of one or more CONTRACTOR representatives to assist CITY in meeting requirements of the California Integrated Waste Management Act (IWMA) of 1989. On an annual basis, CONTRACTOR will make an individual available as needed to implement, in cooperation with the CITY, Recycling programs in the Service Area on an average of approximately two days a week.

14.01.2 Diversion and Sustainability Work Plan. Collaboratively, CONTRACTOR and CITY staff will develop an annual Waste Diversion and Sustainability Work Plan to help guide CONTRACTOR's staff's work efforts. This program must be designed to increase diversion and Service Recipients participation and should target certain Recyclable Materials or "problem" areas of CONTRACTOR's Service Area where improvements can be maximized. Targets of outreach should be based on local trends and recycling patterns based on information obtained by both the Agreement Administrator and CONTRACTOR staff. To the extent possible, CONTRACTOR will work to modernize its public outreach and education services throughout the term of this Agreement by providing outreach materials to Service Recipient electronically (e.g., via email). The parties will make good faith efforts to complete each annual Work Plan by August 1st.

14.01.3 Website. CONTRACTOR will maintain a website that describes and promotes the use of the available Recycling services. The CONTRACTOR will consult, collaborate and coordinate its activities with the CITY regarding Recycling programs so that the CITY is fully informed and provided as opportunity for input to the CONTRACTOR's Recycling programs.

14.01.4 Annual Recycling Awards. CONTRACTOR will recognize outstanding participation in Recycling and/or Organic Waste programs by identifying "recycling all-stars" for recognition at a City Council meeting during each November, beginning November 2022.

14.01.5 Outreach Activities. On an annual basis the CONTRACTOR will coordinate Recycling and Organics education and outreach programs for Residential and Commercial Service Recipients, in conformance with Applicable Laws including without limitation SB 1383, AB 1826, AB 939, AB 341, in coordination with the CITY. This program will consist of the following:

14.01.5.1 CONTRACTOR will attend public events and host booths to promote recycling education and awareness. CONTRACTOR will work with CITY to identify which special events will be attended.

14.01.5.2 CONTRACTOR to distribute educational material to Service Recipients on an annual basis. Examples include recycling tips, battery and bulb education, proper Cart

placement, resource information, and HHW education. This material will be mailed or electronically transmitted to Service Recipients.

14.01.5.3 Service Recipients will have access to CONTRACTOR's local website to find information specific to the CITY's programs. The CONTRACTOR will ensure that information provided on the website is maintained and up-to-date. This content will include proper container set out, educational materials, newsletters and program descriptions. Service Recipients will also have the ability to use CONTRACTOR's web-based service request system.

14.01.5.4 CONTRACTOR with CITY and will work with local media to ensure information is communicated to the community (new programs, events, recycling information, etc.).

14.01.5.5 CONTRACTOR to use options, such as; local newspaper, broadcast news, websites, home owners associations (HOA), and civic groups.

14.01.5.6 CONTRACTOR will assist the CITY in supporting Food Waste and Green Waste diversion surveys and programs.

14.01.5.7 CONTRACTOR will complete Garbage, Organic Waste, and Recycling audits for Commercial Service Recipients and provide recommendations to Commercial Service Recipients on how to improve overall resource efficiency.

14.01.6 News Media Requests. CONTRACTOR will notify the Agreement Administrator by fax, e-mail or phone of all requests for news media interviews related to the services covered under this Agreement within one (1) Work Day of CONTRACTOR's receipt of the request. When practicable, before responding to any inquiries involving controversial issues or any issues likely to affect participation or Service Recipient's perception of services, CONTRACTOR will discuss CONTRACTOR's proposed response with the Agreement Administrator.

14.01.6.1 Copies of draft news releases or proposed trade journal articles that use the name of CITY or relate to the services provided hereunder must be submitted to the Agreement Administrator for prior review and approval at least five (5) working days in advance of release, except where CONTRACTOR is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case CONTRACTOR must submit such materials to CITY simultaneously with CONTRACTOR's submittal to such regulatory agency.

14.01.6.2 Copies of articles resulting from media interviews or news releases that use the name of CITY or relate to the services provided hereunder must be provided to the CITY within five (5) days after publication.

14.02 Annual Collection Service Notice. Each year during the term of this Agreement, CONTRACTOR must publish and distribute (by mail or electronically) a notice to all Service Units regarding the Collection Service programs. The notice must contain at a minimum; definitions of the materials to be Collected; procedures for setting out the materials; the days when Garbage Collection Services, Recycling Services, and Organic Waste Collection Services will be provided; CITY customer service phone number;

instructions on the proper filling of Containers; instructions as to what materials may or may not be placed in Recyclable Materials or Organic Waste Containers; and the amount of overage and contamination fees in the event of non-compliance. The notice must also advertise the availability of on-premises Collection Services, SFD Large Items Collection Services and Temporary Construction and Demolition Debris Collection Services, and specifically the availability of no-charge on-premises Collection Services for specific qualified Service Recipients as described in Section 7.02.1. The notice must also advertise the date and location of upcoming free paper shredding events as described in Section **Error! Reference source not found.** below. The notice must be provided in English, and other languages as directed by the CITY and must be distributed by CONTRACTOR no later than March 31 of each year.

14.03 Edible Food Recovery Support. At no cost to the CITY, CONTRACTOR must provide support to the CITY's Edible Food Recovery program as required under SB 1383. CONTRACTOR support may include educating commercial edible food generators, and providing records of site visits, conducting education efforts, and listing food recovery organizations.

14.04 Additional Outreach Programs and Services. CONTRACTOR will provide additional public outreach services and programs as requested by CITY at a price to be mutually agreed upon by written agreement between the CONTRACTOR and the Agreement Administrator. This agreement will ultimately take the form of a standard CONTRACTOR personal services agreement. In the event the CONTRACTOR and Agreement Administrator cannot reach a mutually agreed upon price for the requested service or program, CITY shall have the right to procure the service of other vendors or contractors to provide the requested public outreach services, and CONTRACTOR shall reimburse CITY for the reasonable costs incurred to obtain the public outreach services.

ARTICLE 15. Emergency Service

15.01 Revised Services During an Emergency. In the event of a natural disaster or Act of God, the Agreement Administrator may grant the CONTRACTOR a variance from regular routes and schedules, which will not be withheld unreasonably. As soon as practicable after such event, CONTRACTOR must advise the Agreement Administrator when it is anticipated that normal routes and schedules can be resumed. The Agreement Administrator will make an effort through the local news media and in coordination with the CITY to inform the public when regular services may be resumed. The clean-up from a natural disaster or Act of God may require that CONTRACTOR hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the natural disaster or Act of God. CONTRACTOR will receive additional compensation for extraordinary clean-up directly in response to a natural disaster or Act of God above the normal compensation contained in this Agreement, to cover the costs of rental equipment, additional personnel, overtime hours and other documented expenses based on the rates set forth in **Exhibit 1** provided CONTRACTOR has first secured written authorization and approval from CITY through the Agreement Administrator. CITY will be given equal priority and access to resources as with other franchise jurisdictions held by CONTRACTOR or its affiliates.

ARTICLE 16. Record Keeping and Reporting Requirements

16.01 Record Keeping. Notwithstanding ARTICLE 40 herein:

16.01.1 Accounting Records. CONTRACTOR must maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection Services, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records will be subject to audit, copy, and inspection. Gross receipts derived from provision of the Collection Services, whether such services are performed by CONTRACTOR or by a subcontractor or subcontractors, will be recorded as revenues in the accounts of CONTRACTOR. CONTRACTOR must maintain and preserve all cash, billing and disposal records for a period of not less than three (3) years following the close of each of CONTRACTOR's fiscal years.

16.01.1.1 CITY reserves the right to request audited, reviewed, or compiled financial statements prepared by an independent Certified Public Accountant, or as may be provided by CONTRACTOR's parent, _____. In the event that CONTRACTOR does not maintain separate financial or accounting records prepared specifically for services provided under this Agreement, CONTRACTOR may use industry standard allocation methods to provide financial information as applicable to the service provided under this Agreement.

16.01.2 Agreement Materials Records. CONTRACTOR must maintain records of the quantities of Solid Waste collected, processed, and disposed under the terms of this Agreement, by type, Collected, purchased, processed, sold, donated or given for no compensation, and Residual disposed.

16.01.3 Other Records. CONTRACTOR must maintain all other records reasonably related to provision of Collection Services, whether or not specified in this the Agreement.

16.02 Monthly Reporting.

16.02.1 General. Monthly reports must be submitted no later than 5 p.m. PT on the fifteenth (15th) day of the month following the close of the reporting period. If the fifteenth (15th) day falls on a day that CITY is closed or a holiday, then the payment will be due on the next business day.

16.02.1.1 Overweight Vehicle Reporting. The monthly report must include a summary total of all instances of overweight collection vehicles. This summary must include the number of overweight vehicle instances expressed as a percentage of the total number of collection vehicle loads transported during the reported month.

16.02.1.2 Contamination Reporting. To the extent required by Applicable Law, the monthly report must include a summary of all instances of qualifying contamination under the procedures in Section 3.09. This summary must include the total number of accounts where contamination occurred, the total number of Contamination Violation Notices issued by CONTRACTOR to Service Recipients, and the total number of instances where Collection Cart or Bins size or Collection frequency was increased specifically due to contamination. Within twenty (20) work days of request by CITY,

CONTRACTOR will provide copies of the Contamination Violation Notices and the digital documentation of contamination.

16.02.1.3 CONTRACTOR Billing Account Information. The monthly report must include a complete customer billing account and service level data for all Collection services provided by CONTRACTOR under this Agreement during the prior month.

16.03 Quarterly Reporting.

16.03.1 General. Quarterly reports must be submitted no later than 5 p.m. PT on the twenty-fifth (25th) day following the last month of the quarter. If the twenty-fifth (25th) day falls on a day that CITY is closed or a holiday, then the report will be due on the next business day.

16.03.2 CITY Reports. Quarterly reports to CITY must include:

16.03.2.1 CONTRACTOR Billing Account Information. CONTRACTOR must include a complete customer billing account and service level data for all Collection services provided during the preceding quarter.

16.03.2.2 Franchised Tonnage Data. CONTRACTOR must report the tonnage of Garbage, Recyclable Materials and Organic Waste collected, processed for diversion, Residual amounts and landfilled for broken down by SFD, MFD, Commercial, and City Service Collection Services.

16.03.2.3 Non-Collection. The quarterly report must include a summary of each Service Unit receiving a Non-Collection Notice in the previous quarter along with a description for the Non-Collection Notice.

16.03.2.4 Collection Overage Charges. The quarterly report must include each Service Unit incurring a charge for a Solid Waste Overage in the previous quarter.

16.03.2.5 Service Recipient Complaint Log. The quarterly report must include the Service Recipient call log collected from the previous quarter as required in Section 13.01 of this Agreement.

16.03.2.6 Account Verification. CONTRACTOR shall notify the CITY of service starts, holds, or terminations.

16.04 Annual Reporting.

16.04.1 General. An annual report must be submitted no later than 5:00 p.m. PT on February 15, 2022 and each February 15th thereafter for the previous Calendar Year. If February 15th falls on a day that CITY is closed, then the report will be due on the next business day. Annual reports must be provided electronically in software acceptable to the CITY.

16.04.2 CITY Reports. Annual reports to CITY must include:

16.04.2.1 Financial Reports. CONTRACTOR must prepare an annual Financial Report for submittal to the CITY. At a minimum, the Financial Report must include the number of SFD Service Units and Commercial Service Units provided with Collection Services, including any additional services, the CONTRACTOR's gross billing and amount collected for each type of Service Unit, and the amount received for the sale of Recyclable Materials, cost of Recyclables Materials processing, and the cost of residual disposal.

16.04.2.2 Public Education Summary. Public education and information activities undertaken during the year, including distribution of bill inserts, collection notification tags, community information and events, tours and other activities related to the provision of Collection Services. This report will discuss the impact of these activities on Recycling program participation and include amounts Collected from SFD and Commercial Service Units.

16.04.2.3 Summary of Programs. An analysis of any Recycling and Organic Waste Collection, processing and marketing issues or conditions (such as participation, setouts, contamination, etc.) and possible solutions, discussed separately for SFD and Commercial programs.

16.04.2.4 Garbage Data. The number of SFD and Commercial Service Units and the number of Bins, Carts and Roll-Off Containers distributed by size and Service Unit type.

16.04.2.5 Recycling Data. Gross tons Collected daily on average by material type by route for SFD and Commercial Recycling service. The average participation rates by quarter relative to the total number of Service Units by Service Unit type. Indicate, by material type (and grade where appropriate), quarterly totals of Recyclable Materials processed and sold including facility name and location, average price received per ton and total recycling revenue received for the Calendar Year, cost of Recyclables Materials processing, and the cost of residual disposal. Indicate any quantities, by material type, donated or otherwise disbursed without compensation. Indicate number of Bins and Carts distributed by size and Service Unit type. Also provide quarterly totals and location for Residual disposed.

16.04.2.6 Organic Waste Data. Include average daily gross tons Collected by route. Include the total number of generators that receive each type of Organic Waste Collection Service provided by the CONTRACTOR. Indicate average daily number of set-outs by route. Indicate average participation rates relative to the total number of Service Units in terms of weekly set-out counts. Indicate number of Bins and Carts distributed by size and Service Unit type. Provide totals and location for Residue Disposed. Include the number of route reviews conducted for prohibited contaminants and the number of Non-Collection Notices issued to Service Recipients.

16.04.2.7 Commercial Outreach Report. A complete list of all Commercial accounts, which includes each account's status as a "covered generator" under AB 341 and AB 1826, the date and status of CONTRACTOR's outreach efforts at each account, and the current level of Recycling and Organics program participation at each account.

16.04.2.8 Customer Service Log. A summary of the type and number of complaints and their resolution, including calls related to missed pickups and responses to such calls. (with three-year retention)

16.04.2.9 Green Pages. A copy of CONTRACTOR's most recent "Green Pages" (i.e., customer call center "cheat sheet") for the City of Los Banos, or the equivalent information used by customer service representatives in the event that the "Green Pages" are renamed or otherwise reworked during the term of this Agreement.

16.04.2.10 Overweight Vehicle Data. A summary of all instances of overweight collection vehicles. This summary must also include the number of overweight vehicle instances as a percentage of the total number of collection vehicle loads transported during the Calendar Year.

16.04.2.11 Summary Narrative. A summary narrative of problems encountered with Collection and processing activities and actions taken. Indicate type and number of Non-Collection Notices left at Service Recipient locations. Indicate instances or numbers of property damage or injury, significant changes in operation, market factors, publicity conducted, or needs for publicity. Include description of processed material loads rejected for sale, reason for rejection and disposition of load after rejection.

16.04.2.12 Bin, Cart, and Vehicle Inventory. An updated complete inventory of Bins and Carts by type and size, and an updated complete inventory of Collection vehicles including for each vehicle: truck number, date purchased, vehicle type, tare weight, license plate number, and vehicle make and model.

16.04.2.13 AB 341, AB 1826, and SB 1383 Compliance Data. CONTRACTOR must report the total number of Commercial Service Units serviced and the number of containers, container sizes and frequency of Collection for Garbage, Recyclable Materials and Organic Waste for each Commercial and MFD Service Unit. CONTRACTOR must also provide the following information separately for both AB 341, AB 1826 and SB 1383.

16.04.2.14 The total number of Commercial and MFD Service Units that fall under the AB 341 or AB 1826 thresholds, and the total number of those Commercial Service Units that are not receiving CONTRACTOR's required services to Commercial and MFD Recycling Collection Service or Commercial and MFD Organics Collection Service.

16.04.2.15 A summary of the type of follow-up outreach that was provided to those Commercial Service Units that are not subscribed to Commercial and MFD Recycling Collection Service or Commercial and MFD Organics Collection Service.

16.05 Diversion Data. By 5:00 p.m. PT on February 15, 2022, and annually thereafter during the term of this Agreement, CONTRACTOR must deliver to CITY diversion data for the franchised services performed under this Agreement in the format specified by CITY.

16.06 CalRecycle Reports. CONTRACTOR will provide reasonable assistance to CITY in preparing annual reports to CalRecycle, including but not limited to supplying required data for preparation of the reports.

16.06.1 In the event that CalRecycle requires CITY to submit an Implementation Schedule to comply with AB 341, AB 1826, SB 1383 and other Applicable Laws, CONTRACTOR will provide reasonable assistance to CITY in preparing a report, including CONTRACTOR's policies and procedures related to compliance with AB 341, AB 1826, SB 1383, and other Applicable Laws and how recycling or organics are collected, a description of the geographic area, routes, list of addresses served and a method for tracking contamination, copies of route audits, copies of notice of contamination, copies of notices, violations, education and enforcement actions issued, and copies of educational materials, flyers, brochures, newsletters, website, and social media.

16.07 Additional Reporting. CONTRACTOR must furnish CITY with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period.

ARTICLE 17. Nondiscrimination

17.01 Nondiscrimination. In the performance of all work and services under this Agreement, CONTRACTOR may not discriminate against any person on the basis of such person's race, color, sex (including pregnancy, childbirth, and related medical conditions), age, ancestry, national origin, religion, marital status, or sexual orientation, gender identify and gender expression, disability (physical and mental), medical conditions, AIDS/HIV, citizenship status and genetic information, military or veteran status, political affiliations or activities, and status as a victim of domestic violence, assault or stalking. CONTRACTOR must comply with all applicable local, state and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

ARTICLE 18. Quality of Performance of Contractor

18.01 Intent. CONTRACTOR acknowledges and agrees that one of CITY's primary goals in entering into this Agreement is to ensure that the Collection Services are of the highest caliber, that Service Recipient satisfaction remains at the highest level, that maximum diversion levels are achieved, and that materials Collected are put to the highest and best use to the extent possible.

18.02 Service Supervisor. CONTRACTOR must assign a qualified supervisor to be in charge of the Collection Service within the Service Area and must provide the contact name of that person in writing to the Agreement Administrator within thirty (30) days of the execution of this Agreement, and annually by January 1st of each subsequent Calendar Year of the term of this Agreement, and any other time the person in that position changes. The supervisor must be physically located in the Service Area and available to the Agreement Administrator through the use of telecommunication equipment at all times that CONTRACTOR is providing Collection Services. In the event the supervisor is unavailable due to illness or vacation, CONTRACTOR must designate an acceptable substitute who will be available and who has the authority to act in the same capacity as the supervisor.

18.03 CONTRACTOR Representative. CONTRACTOR must designate a Representative (CONTRACTOR's Representative) and must provide the name of that person in writing to CITY within thirty (30) days of the execution of this Agreement and annually by January 1st of each subsequent Calendar Year of this Agreement and any other time the person in that position changes. The CONTRACTOR's Representative must be available to the CITY through the use of telecommunications equipment at all times that CONTRACTOR is providing Collection Services in the Service Area. The CONTRACTOR's Representative must provide CITY with an emergency phone number where the CONTRACTOR's Representative can be reached outside of normal business hours.

18.04 Administrative Charges. Should CONTRACTOR be in material breach of the requirements set forth in this Agreement, it is mutually understood and agreed that the public will necessarily suffer damages and that such damages, from the nature of the default in performance will be extremely difficult to value and impractical to fix. CITY finds, and the 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 or the costs related thereto which will be incurred by CITY as a result of a material 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 this Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) 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. Accordingly, the CONTRACTOR and CITY agree that the following table of Administrative charges are acceptable remedies in the amounts set forth opposite the breach described.

ADMINISTRATIVE Charges			
Item		Amount if Not Cured in 30 Days	If Cured in 15 Days
a.	Failure to respond to each complaint within three (3) Work Days of receipt of complaint.	\$100 per day per incident per Service Recipient.	
b.	Failure to maintain call center hours as required by this Agreement.	\$100 per day.	-0-
c.	Failure to submit to CITY all reports by the deadlines required under the provisions of this Agreement.	\$100 per day.	-0-
d.	Failure to submit to CITY all payments by the deadlines required under the provisions of this Agreement.	\$500 per day.	-0-

ADMINISTRATIVE Charges			
Item		Amount if Not Cured in 30 Days	If Cured in 15 Days
e.	Failure to display CONTRACTOR's name and customer service phone number on collection vehicles.	\$100 per incident per day.	-0-
f.	Failure to collect a missed collection by close of the next Work Day upon notice to CONTRACTOR that exceeds twenty (20) in any Calendar Year.	\$1,000 per Calendar year, plus \$10 per incident per day.	-0-
g.	Failure to repair or replace damaged Containers to deliver or exchange Containers within the time required by this Agreement, that exceeds twenty (20) in any Calendar year.	\$1,000 per Calendar year, plus \$10 per incident per day.	
h.	Failure to maintain collection hours as required by this Agreement.	\$100 per day.	-0-
i.	Failure to have CONTRACTOR personnel in CONTRACTOR-provided uniforms.	\$25 per day per employee.	-0-
j.	Failure of CONTRACTOR to follow Recyclable Materials and Organic Waste Contamination procedures as set forth under Section 3.09.	Submit plan of correction to CITY	-0-
k.	Failure of CONTRACTOR to meet the Customer Service Requirements.	\$1,000 per day	-0-
The following items Can Not Be Cured			
	Item	Amount (cannot be cured)	
l.	Failure to clean up spillage or litter on public streets located within CITY caused by CONTRACTOR's collection vehicles within two (2) hours after notice by CITY to CONTRACTOR.	\$500 per incident per location and reimbursement to CITY for cleanup.	
m.	Disposal of separately collected Recyclable Materials or separately collected Organic Waste in the Disposal Facility without first obtaining the required permission of the CITY.	\$500 per load.	
n.	Failure to deliver Garbage collected under this Agreement to the Disposal Facility, except as otherwise expressly provided in this Agreement.	\$5,000 each failure.	

ADMINISTRATIVE Charges			
	Item	Amount if Not Cured in 30 Days	If Cured in 15 Days
o.	Failure to submit a corrective action plan as set forth in Section 5.02.4 (b).	The current disposal cost/ton for each ton under the diversion requirement.	
p.	Overweight Collection Vehicles, as set forth by Section 12.01.4.	\$500 per day per load after CITY has considered CONTRACTOR's reason for excessive overweight vehicles.	

18.05 Procedure for Review of Administrative Charges. The Agreement Administrator may assess administrative charges pursuant to this Agreement on a monthly basis. At the end of each month during the term of this Agreement, the Agreement Administrator will issue a written notice to CONTRACTOR ("Notice of Assessment") of the administrative charges assessed and the basis for each assessment.

18.05.1 The assessment will become final unless, within ten (10) business days of the date of the notice of assessment, CONTRACTOR provides a written request for a meeting with the City Manager to present evidence that the assessment should not be made, or the alleged deficiency has been cured.

18.05.2 The Agreement Administrator will schedule a meeting between CONTRACTOR and the City Manager as soon as reasonably possible after timely receipt of CONTRACTOR's request.

18.05.3 The City Manager will review CONTRACTOR's evidence and render a decision sustaining or reversing the administrative charges within ten (10) business days after the meeting. Written notice of the decision will be provided to CONTRACTOR.

18.05.4 In the event CONTRACTOR does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Assessment and the alleged deficiency is not cured, the Agreement Administrator's determination will be final.

18.05.5 CITY's assessment or collection of administrative charges are in addition to and not in lieu of any other remedy available to it and will not prevent CITY from exercising any other right or remedy, including the right to terminate this Agreement, for CONTRACTOR's failure to perform the work and services in the manner set forth in this Agreement.

18.06 Acts of God and Natural Disasters.

18.06.1 If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, acts of the State of California or the U.S. Federal government, acts of God or natural disasters, whether of the kind enumerated or otherwise, that are not reasonably within the control of the affected party, then the affected party will be excused from performance hereunder during the period of such disability.

18.06.2 The party claiming excuse from performance must promptly notify the other party when it learns of the existence of such cause, including the facts constituting such cause, and when such cause has terminated.

18.06.3 The interruption or discontinuance of services by a party caused by circumstances outside of its control will not constitute a default under this Agreement.

ARTICLE 19. Performance Bond

19.01 Performance Bond. The Agreement must be executed, and a performance bond furnished by CONTRACTOR within thirty (30) calendar days of City Council approval of the Agreement; otherwise, the bid bond shall be forfeited to the CITY.

19.01.1 CONTRACTOR shall furnish to the CITY, and keep current, a performance bond in a form acceptable to the CITY, for the faithful performance of this Agreement and all obligations arising hereunder in an amount of **One Million Five-Hundred Thousand Dollars (\$1,500,000)** during the term of the Agreement.

19.01.2 The performance bond shall be executed by a surety company that is acceptable to the CITY; an admitted surety company licensed to do business in the State of California; that has an "A:VII" or better rating by A.M. Best or Standard and Poors; and is included on the list of surety companies approved by the Treasurer of the United States.

19.02 Letter of Credit. As an alternative to the performance bond required by Article 20.01, at CITY's option, within thirty (30) calendar days from the date the City Council approves this Agreement, CONTRACTOR must furnish to CITY, an irrevocable letter of credit, for the faithful performance of this Agreement and all obligations arising hereunder in an amount as follows:

19.02.1 From July 1, 2021 and so long as this Agreement or any extension thereof remains in force, CONTRACTOR must maintain a letter of credit in the amount of **One Million Five-Hundred Thousand Dollars (\$1,500,000)**. The letter of credit must be issued by an FDIC insured banking institution chartered to do business in the state of California, in CITY's name, and be callable at the discretion of the CITY.

ARTICLE 20. Insurance

20.01 Insurance Policies. CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work described herein and the results of that work by the CONTRACTOR, its agents, representatives, employees, or subcontractors. With respect to General Liability and Contractors Pollution Liability, coverage should be maintained for a minimum of five (5) years after contract completion.

20.02 Minimum Scope and Limit of Insurance. If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown below in Sections 20.02.1 through 20.02.4, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY. Insurance coverage must be at least this broad:

20.02.1 Commercial General Liability (CGL). Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

20.02.2 Automobile Liability. Insurance Services Office Form Number CA 0001 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired (Code 8) and non-owned (Code 9) autos, with limit no less than \$5,000,000 per accident for bodily injury and property damage.

20.02.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$3,000,000 per accident for bodily injury or disease.

20.02.4 Contractor's Pollution Liability. Applicable to the work being performed, with a limit no less than \$3,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year.

20.03 Self-Insured Retentions. Any self-insured retentions must be declared to the Agreement Administrator. Should CITY form a reasonable belief that CONTRACTOR may be unable to pay any self-insured retentions, CONTRACTOR must procure a letter of credit issued by a state of federal guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by CITY's risk manager.

20.04 Other Insurance Provisions.

20.04.1 The General Liability, Automobile Liability, and Contractors Pollution Liability, policies are to contain, or be endorsed to contain, the following provisions:

20.04.1.1 The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations, but excepting workers' compensation liability. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance (at least as broad as ISO Form CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

20.04.1.2 For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

20.04.1.3 Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the CITY.

20.04.2 The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by CONTRACTOR pursuant to the Agreement. This coverage may also be provided on the Contractors Pollution Liability policy.

20.04.3 If General Liability and Contractors Pollution Liability coverages are written on a claims-made form:

20.04.3.1 The retroactive date must be shown and must be before the date of the Agreement or the beginning of work under this Agreement.

20.04.3.2 Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

20.04.3.3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the CONTRACTOR must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.

20.04.3.4 A copy of the claims reporting requirements must be submitted to the CITY for review.

20.05 Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A-: VII if admitted in the State of California.

20.06 Verification of Coverage. CONTRACTOR shall furnish the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to CITY before work begins. However, failure to

obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CITY reserves the right to review complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, at CONTRACTOR's address indicated for receipt of notices in this Agreement.

20.07 Waiver of Subrogation. CONTRACTOR hereby grants to CITY a waiver of subrogation which any insurer may acquire against CITY, its officers, officials, employees, and volunteers, from CONTRACTOR by virtue of the payment of any loss arising from CONTRACTOR's performance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONTRACTOR, its employees, agents, and subcontractors under this Agreement.

20.08 Subcontractors. CONTRACTOR shall require and verify that all subcontractors performing work in the CITY maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that CITY is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

20.09 Special Risks or Circumstances. CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

ARTICLE 21. Indemnification

21.01 General Indemnification. CONTRACTOR must indemnify, defend and hold harmless CITY, CITY's contractors, and its elected and appointed public officials, officers, directors, employees, agents and other contractors of each of them (collectively, "CITY Indemnitees"), from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals as well as all court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the CONTRACTOR, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), arising from, relative to or caused by the performance of the services. (collectively, "Claims") This indemnity includes but is not limited to Claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property. CONTRACTOR agrees, at CONTRACTOR's expense, after written notice from the CITY, to defend any action against the CITY Indemnitees that falls within the scope of this indemnity using counsel selected by CONTRACTOR and approved by CITY in its reasonable judgment. Additionally, if CONTRACTOR, after receipt of written notice from the CITY, fails to make any payment due under this Agreement to CITY, CONTRACTOR must pay any reasonable attorneys' fees or costs incurred by CITY in securing any such payment from CONTRACTOR. Payment of any amount due pursuant to the foregoing indemnity must, after receipt of written notice by CONTRACTOR from CITY that such amount is due, be made by CONTRACTOR prior to CITY being required to pay same, or in the alternative, CITY, at CITY's option, may make payment of an amount so due and CONTRACTOR must

promptly reimburse CITY for the same, together with interest thereon at the rate of 12% per annum simple interest from the date of receipt by CONTRACTOR of written notice from CITY that such payment is due.

21.02 Diversion Indemnification. Subject to the requirements of Public Resources Code section 40059.1, which will control in the event of any conflict with the provisions of this Section, CONTRACTOR agrees to protect and defend CITY Indemnitees with counsel selected by CONTRACTOR and approved by CITY, to pay all attorneys' fees, and to indemnify and hold CITY Indemnitees harmless from and against all fines or penalties imposed by the CalRecycle if the diversion goals specified in California Public Resources Code section 41780, as it may be amended, are not met by CITY with respect to the materials Collected by CONTRACTOR and if the lack in meeting such goals are attributable to the failure of CONTRACTOR to implement and operate the recycling or diversion programs or undertake the related activities required by this Agreement. In the event CalRecycle provides an administrative process to challenge the imposition of a compliance order or a fine or fines, CONTRACTOR will be responsible for engaging any consultants or attorneys necessary to represent CITY in any challenge. CONTRACTOR will be responsible for the retention of and payment to any consultants engaged to perform waste generation studies (diversion and disposal). All consultants and attorneys engaged hereunder are subject to the mutual agreement of CITY and CONTRACTOR.

21.03 Hazardous Substances Indemnification. CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by CITY), protect and hold harmless the CITY Indemnitees from and against any and all Claims of any kind whatsoever paid, suffered or incurred by or against the CITY Indemnitees resulting from any repair, cleanup, removal action or response action undertaken pursuant to CERCLA, the Health & Safety Code or other similar federal, state or local law or regulation, with respect to Solid Waste Collected and Disposed of by CONTRACTOR. The foregoing indemnity is intended to operate as an agreement pursuant to section 107(e) of CERCLA and section 25364 of the Health & Safety Code to defend, protect, hold harmless and indemnify the CITY Indemnitees from all forms of liability under CERCLA, the Health & Safety Code or other similar federal, state or local law or regulation.

21.04 Propositions 218 and 26 Release. CITY intends to comply with all applicable laws concerning the Maximum Service Rates provided under this Agreement. Upon thorough analysis, the parties have made a good faith determination that the Maximum Service Rates for the Solid Waste Collection Services provided under this Agreement are NOT subject to California Constitution Articles XIII C and XIII D because, among other reasons, such services are provided by a private corporation and not by CITY pursuant to ARTICLE 4, and CONTRACTOR independently establishes the rates for services within the limits established in this Agreement. Accordingly, CONTRACTOR agrees to hold harmless and release the CITY Indemnitees from and against any and all claims CONTRACTOR may have against the CITY Indemnitees resulting from the Maximum Service Rates provided for under this Agreement or in connection with the application of California Constitution Article XIII C and Article XIII D to the imposition, payment or collection of the rates under this Agreement. This Section will survive the expiration or termination of this Agreement for Claims arising prior to the expiration or termination of this Agreement.

21.05 Consideration. It is specifically understood and agreed that the consideration inuring to CONTRACTOR for the execution of this Agreement consists of the promises, payments, covenants, rights and responsibilities contained in this Agreement.

21.06 Obligation. This Agreement obligates CONTRACTOR to comply with the foregoing indemnification and release provisions; however, the collateral obligation of providing insurance must also be complied with as set forth in this Agreement.

21.07 Subcontractors. CONTRACTOR must require all subcontractors performing work in the CITY to enter into an Agreement containing the provisions set forth in Section 21.01 in which Agreement the subcontractor fully indemnifies CITY in accordance with this Agreement.

21.08 Exception. Notwithstanding other provisions of this Agreement, CONTRACTOR's obligation to indemnify, hold harmless and defend CITY, its officers and employees will not extend to any loss, liability, penalty, damage, action or suit arising or resulting from acts or omissions constituting sole or active negligence, willful misconduct, material breach of this Agreement, or violation of law on the part of CITY, its officers or employees.

21.09 Damage by CONTRACTOR. If CONTRACTOR's employees or subcontractors cause any injury, damage or loss to CITY property, including but not limited to CITY streets or curbs, excluding normal wear and tear, CONTRACTOR must reimburse CITY for CITY's cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by CONTRACTOR for any such injury, damage or loss. With the prior written approval of CITY, CONTRACTOR may repair the damage at CONTRACTOR's sole cost and expense. Any injury, damage or loss to private property caused by the negligent or willful acts or omissions of CONTRACTOR to private property must be repaired or replaced by CONTRACTOR at CONTRACTOR's sole expense. Disputes between CONTRACTOR and its Service Recipients or private property owners as to damage to private property are civil matters and complaints of damage will be referred to CONTRACTOR as a matter within its sole responsibility and as a matter within the scope of Section 21.01 (Indemnification).

ARTICLE 22. Default of Agreement

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

22.01.1 CONTRACTOR takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

22.01.2 By order or decree of a court, CONTRACTOR is adjudged bankrupt or an order is made approving a petition filed by any of its creditors or by any of the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) calendar days after the entry thereof, any

notice of default will be and become null, void and of no effect; unless such stayed judgment or order is reinstated in which case, such default will be deemed immediate; or

22.01.2.1 By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of CONTRACTOR, and such possession or control continues in effect for a period of sixty (60) calendar days; or

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

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

22.01.5 In the event that the monies due CITY under Section 22.01.3 above or an unsatisfied final judgment under Section 22.01.4 above is the subject of a judicial proceeding, CONTRACTOR will not be in default if the sum of money is bonded. All bonds must be in the form acceptable to the CITY Attorney; or

22.01.6 CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement or any of the rules and regulations promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Agreement Administrator relative thereto and such default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so, or if by reason of the nature of such default, the same cannot reasonably be remedied within thirty (30) calendar days following receipt by CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails to commence the remedy of such default within such thirty (30) calendar days following such written notice or having so commenced fails thereafter to continue with diligence the curing thereof (with CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure such default, and such default will be cured within a reasonable period of time).

22.02 Violations. Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this Article, in the event that CONTRACTOR's record of performance shows that CONTRACTOR has defaulted in the performance of any of the covenants and conditions required herein excepting those for which CITY's remedy is to levy and collect a penalty as Administrative Charges under ARTICLE 18, to be kept and performed by CONTRACTOR three (3) or more times in any twenty-four (24) month period, and regardless of whether the CONTRACTOR has corrected each individual condition of default, CONTRACTOR will be deemed a "habitual violator", will be deemed to have waived the right to any further notice or grace period to correct, and all such defaults will be considered cumulative and collectively will constitute a condition of irredeemable default. CITY will thereupon issue CONTRACTOR a final warning citing the circumstances therefore, and any single default by

CONTRACTOR of whatever nature, subsequent to the occurrence of the last of such cumulative defaults, will be grounds for immediate termination of the Agreement. In the event of any such subsequent default, CITY may terminate this Agreement upon giving of written final notice to CONTRACTOR, such cancellation to be effective upon the date specified in CITY's written notice to CONTRACTOR, and all contractual fees due hereunder plus any and all charges and interest will be payable to such date, and CONTRACTOR will have no further rights hereunder. Immediately upon the specified date in such final notice CONTRACTOR must cease any further performance under this Agreement.

22.03 Effective Date of Termination. In the event of any the events specified above, and except as otherwise provided in such subsections, termination will be effective upon the date specified in CITY's written notice to CONTRACTOR and upon such date this Agreement will be deemed immediately terminated and upon such termination all liability of CITY under this Agreement to CONTRACTOR will cease, and CITY will have the draw down on the Letter of Credit and will be free to negotiate with other contractors for the operation of interim and long-term Collection Services. CONTRACTOR must reimburse CITY for all direct and indirect costs of providing any interim Collection Services as a result of CONTRACTOR's default in this Agreement.

22.04 Immediate Termination. CITY may terminate this Agreement immediately upon written notice to CONTRACTOR in the event CONTRACTOR: (a) fails to provide and maintain Letter of Credit as required by this Agreement, (b) fails to obtain or maintain insurance policies endorsements as required by this Agreement, (c) fails to provide the proof of insurance as required by this Agreement, or (d) offers or gives any gift to a CITY official or employee prohibited by CITY's Municipal Code.

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

22.06 Alternative Service. Should CONTRACTOR, for any reason, except the occurrence or existence of any of the events or conditions set forth in Section 18.06, refuse or be unable for a period of more than forty-eight (48) hours, to Collect a material portion or all of the Solid Waste which it is obligated under this Agreement to Collect, and as a result, Solid Waste should accumulate in CITY to such an extent, in such a manner, or for such a time that the City Manager, in the reasonable exercise of the City Manager's discretion, should find that such accumulation endangers or menaces the public health, safety or welfare, then CITY will have the right to contract with another Solid Waste enterprise to Collect any or all Solid Waste which CONTRACTOR is obligated to Collect pursuant to this AGREEMENT. CITY must provide twenty-four (24) hours prior written notice to CONTRACTOR during the period of such emergency, before contracting with another Solid Waste enterprise to Collect any or all Solid Waste which CONTRACTOR would otherwise collect pursuant to this Agreement for the duration of period during which CONTRACTOR is unable to provide such services. In such event, CONTRACTOR must undertake commercially reasonable efforts to identify sources from which such substitute Solid Waste services are immediately available, and must reimburse CITY for all of its expenses for such substitute services during the period in which CONTRACTOR is unable to provide Collection services required by this Agreement.

22.07 Survival of Certain Contractor Obligation. Notwithstanding the termination of this Agreement by CONTRACTOR or CITY, CONTRACTOR's obligation to indemnify, defend and hold CITY

and CITY Indemnitees harmless as provided in ARTICLE 21 shall survive termination for five (5) years from the date of termination. Notwithstanding the termination of this Agreement by CONTRACTOR or CITY, such act shall not automatically invalidate or cancel any insurance policy, letter of credit, performance bond or similar instruments provided by CONTRACTOR under this Agreement and such policies, letters of credit, performance bonds and other instruments shall remain in full force and effect for one full year after termination.

ARTICLE 23. Modifications to the Agreement

23.01 City-Directed Change. CITY has the power to make changes in this Agreement as the result of changes in law, changes in the City of Los Banos Municipal Code, or both, to impose new rules and regulations on CONTRACTOR under this Agreement relative to the scope and methods of providing Collection Services as may from time-to-time be necessary and desirable for the public welfare. CITY will give the CONTRACTOR notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing Collection Services as referenced herein will be liberally construed to include procedures, operations and obligations, financial or otherwise, of CONTRACTOR. When such modifications are made to this Agreement, CITY and CONTRACTOR will negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of CONTRACTOR due to any modification in the Agreement under this Article. CITY and CONTRACTOR will not unreasonably withhold agreement to such compensation adjustment.

23.01.1 Change in Law. CITY and CONTRACTOR understand and agree that the California Legislature has the authority to make comprehensive changes in Solid Waste Collection legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. CONTRACTOR agrees that the terms and provisions of the City of Los Banos Municipal Code, as it now exists or as it may be amended in the future, will apply to all of the provisions of this Agreement and the Service Recipients of CONTRACTOR located within the Service Area. In the event any future change in federal law or regulations, state or local law of regulation, or the City Code materially alters the obligations of CONTRACTOR, then the affected service rates, as established in **Exhibit 1** of this Agreement will be adjusted in accordance with Section 4.04. Nothing contained in this Agreement will require any party to perform any act or function contrary to law. CITY and CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Agreement, CITY and CONTRACTOR will negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of CONTRACTOR due to any change in law or modification in the Agreement under this Article. CITY and CONTRACTOR will not unreasonably withhold agreement to such compensation adjustment.

ARTICLE 24. Legal Representation

24.01 Acknowledgement. It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this

Agreement and, accordingly, the rule that an Agreement will be interpreted strictly against the party preparing the same will not apply due to the joint contributions of both parties.

ARTICLE 25. Financial Interest

25.01 Representation. CONTRACTOR warrants and represents that no elected official, officer, agent or employee of CITY has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no CITY employee who acts in the CITY as a "purchasing agent" as defined in the CITY's Municipal Code, nor any elected or appointed officer of CITY, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material financial interest in CONTRACTOR or this Agreement under Applicable Law.

ARTICLE 26. Contractor's Personnel

26.01 Personnel Requirements. CONTRACTOR must employ and assign qualified personnel to perform all services required under this Agreement. CONTRACTOR is responsible for ensuring that its employees comply with all Applicable Laws related to their employment and position.

26.01.1 CITY may request the transfer of any employee of CONTRACTOR who materially violates any provision of this Agreement, or who is wanton, negligent, or discourteous in the performance of his or her duties under this Agreement.

26.01.2 CONTRACTOR's field operations personnel are required to wear a clean uniform shirt bearing CONTRACTOR's name. CONTRACTOR's employees, who normally come into direct contact with the public, including drivers, must bear some means of individual photographic identification such as a name tag or identification card.

26.01.3 Each driver of a Collection vehicle must at all times carry a valid California driver's license and all other required licenses for the type of vehicle that is being operated.

26.01.4 Each driver of a Collection vehicle must at all times comply with all applicable state and federal laws, regulations and requirements.

26.01.5 CONTRACTOR's employees, officers, and agents may not identify themselves or in any way represent themselves as being employees or officials of CITY.

26.01.6 CONTRACTOR's name and the Customer Service telephone number must be properly displayed on all Collection vehicles.

ARTICLE 27. Exempt Waste

27.01 CONTRACTOR is not required to Collect or dispose of Exempt Waste, but may offer such services. All such Collection and disposal of Exempt Waste is not regulated under this Agreement, but if provided by CONTRACTOR must be in strict compliance with all Applicable Laws.

ARTICLE 28. Independent Contractor

28.01 In the performance of services pursuant to this Agreement, CONTRACTOR is an independent contractor and not an officer, agent, servant or employee of CITY. CONTRACTOR will have exclusive control of the details of the services and work performed and over all persons performing such services and work. CONTRACTOR is solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors or subcontractors will obtain any right to retirement benefits, Workers Compensation benefits, or any other benefits which accrued to CITY employees and CONTRACTOR expressly waives any claim to such benefits.

28.02 Subcontractors. CONTRACTOR will require all subcontractors performing work in the CITY to enter into an Agreement containing the provisions set forth Section 28.01 in which Agreement the subcontractor agrees that CONTRACTOR and subcontractor are independent contractors and have no other agency relationship with CITY.

ARTICLE 29. Laws to Govern

29.01 The law of the State of California governs the rights, obligations, duties and liabilities of CITY and CONTRACTOR under this Agreement and govern the interpretation of this Agreement.

ARTICLE 30. Consent to Jurisdiction

30.01 The parties agree that any litigation between CITY and CONTRACTOR concerning or arising out of this Agreement must be filed and maintained exclusively in the Superior Courts of Merced County, State of California, or in the United States District Court for the Eastern District of California to the fullest extent permissible by law. CONTRACTOR hereby waives any right to remove any such action from Merced County as is otherwise allowed by California Code of Civil Procedure section 394. Each party consents to service of process in any manner authorized by California law.

ARTICLE 31. Assignment

31.01 No assignment of this Agreement or any right occurring under this Agreement may be made in whole or in part by CONTRACTOR without the express prior written consent of CITY. CITY will have full discretion to approve or deny, with or without cause, any proposed or actual assignment by CONTRACTOR. Any assignment of this Agreement made by CONTRACTOR without the express written consent of CITY will be null and void and will be grounds for CITY to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to CONTRACTOR, and upon the date set forth in such notice this Agreement will be deemed terminated, and upon such termination all liability of

CITY under this Agreement to CONTRACTOR will cease, and CITY will have the right to call the Performance Bond provided pursuant to ARTICLE 19 and will be free to negotiate with other contractors, for the services that are the subject of this Agreement. In the event of any assignment approved by CITY, the assignee must fully assume all the liabilities of CONTRACTOR by way of an assignment and assumption agreement. Notwithstanding the above, an assignment to an affiliate of CONTRACTOR may be undertaken upon notice to CITY, but without the requirement for its approval. For purposes of this provision, "affiliate" means any person or legal entity that, directly or indirectly, controls, is controlled by, or is under common control with CONTRACTOR.

31.01.1 In the event that the CITY agrees to assignment of this Agreement to a qualified service provider, CONTRACTOR must pay the City its costs incurred for staff time, consultant fees, and attorneys' fees incurred to evaluate the suitability of any proposed assignee, and to review, draft and finalize any documentation required to approve and implement any assignment. To be considered, assignment applications must include an assignment fee in the amount of **five hundred thousand dollars (\$500,000)** to pay for any and all costs incurred, including the cost of staff time and consultant fees, related to the assignment application and CITY's analysis of the assignment application. Any amount remaining in the assignment fee upon completion of the City's assignment analysis, after deduction of all costs incurred by the CITY related to the assignment, will be credited to the CONTRACTOR. CONTRACTOR payments for assignment costs are in addition to and not in lieu of any other fees, charges or amounts CONTRACTOR is required to pay the CITY pursuant to the Agreement.

31.01.2 CONTRACTOR shall furnish the CITY with audited financial statements of the proposed assignee's operations for the immediately preceding five (5) operating years.

31.01.3 CONTRACTOR must furnish the CITY with satisfactory proof that the proposed assignee has the demonstrated technical capability to perform all franchised services and any other information required by the CITY to ensure the proposed assignee can fulfill the terms of the Agreement in a timely, safe, and effective manner.

31.02 The use of a subcontractor to perform services under this Agreement will not constitute delegation of CONTRACTOR's duties provided that CONTRACTOR has received prior written authorization from the Agreement Administrator to subcontract such services and the Agreement Administrator has approved a subcontractor who will perform such services. CONTRACTOR will be responsible for directing the work of CONTRACTOR's subcontractors and any compensation due or payable to CONTRACTOR's subcontractor will be the sole responsibility of CONTRACTOR. The Agreement Administrator will have the right to require the removal of any approved subcontractor for reasonable cause. The subcontractors listed in **Exhibit 5**, if any, are hereby approved by the CITY.

ARTICLE 32. Compliance with Laws

32.01 In the performance of this Agreement, CITY and CONTRACTOR must comply with all Applicable Laws, including without limitation the Los Banos Municipal Code.

32.02 CITY must provide written notice to CONTRACTOR of any planned amendment of the Los Banos Municipal Code that would substantially affect the performance of CONTRACTOR's services

pursuant to this Agreement. Such notice must be provided at least thirty (30) calendar days prior to the City Council's approval of such an amendment.

ARTICLE 33. Permits and Licenses

33.01 CONTRACTOR must obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Agreement. CONTRACTOR must provide proof of such permits, licenses or approvals and must demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the Agreement Administrator.

ARTICLE 34. Ownership of Written Materials

34.01 CONTRACTOR hereby grants CITY a non-exclusive license as to all reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by CONTRACTOR at the request of CITY or as required under this Agreement, without limitation or restrictions on the use of such materials by CITY. CONTRACTOR may not use such materials that specifically reference CITY for other purposes without the prior written consent of the Agreement Administrator. This ARTICLE 34 does not apply to ideas or concepts described in such materials and does not apply to the format of such materials.

ARTICLE 35. Waiver

35.01 Waiver by CITY or CONTRACTOR of any breach for violation of any term covenant or condition of this Agreement will not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other monies which may become due from CONTRACTOR to CITY will not be deemed to be a waiver by CITY of any breach for violation of any term, covenant or condition of this Agreement.

ARTICLE 36. Restrictions on Gifts to Public Officials

36.01 CONTRACTOR represents that CONTRACTOR is familiar with CITY's which guides CITY's elected officials in limiting the acceptance of gifts or favors where it might reasonably be inferred that the gifts or favors were intended or expected to influence an official's objectivity as an advisor or decision maker, and agrees that it will not offer any CITY officer or designated employee any gifts prohibited by the CITY.

ARTICLE 37. Point of Contact

37.01 The day-to-day dealings between CONTRACTOR and CITY will be between CONTRACTOR Representative and the Agreement Administrator.

ARTICLE 38. Notices

38.01 Except as provided in this Agreement, whenever either party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the CITY:

Agreement Administrator
City of Los Banos
520 J Street
Los Banos, CA 93635
Telephone: (XXX) XXX-XXXX

As to the CONTRACTOR:

CONTRACTOR
Attn: General Manager
ADDRESS
ADDRESS
Telephone: (XXX) XXX-XXXX

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

38.03 Notice by CITY to CONTRACTOR of a Collection or other Service Recipient problem or complaint may be given to CONTRACTOR orally by telephone at CONTRACTOR's local office with confirmation sent to CONTRACTOR through the Customer Service System by the end of the Work Day.

ARTICLE 39. Transition to Next Contractor

39.01 In the event CONTRACTOR is not awarded a new Agreement to continue to provide Collection Services following the expiration or early termination of this Agreement, CONTRACTOR will cooperate fully with CITY and any subsequent contractors to assure a smooth transition of services described in this Agreement. Such cooperation will include but not be limited to transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and a current list of Service Recipients (complete with addresses for Collection Services and billing); providing a complete inventory of all Carts, Bins and Roll-Off Containers; providing adequate labor and equipment to complete performance of all Collection Services required under this Agreement; taking reasonable actions necessary to transfer ownership of Carts, Bins and Roll-Off Containers, as appropriate, to CITY; including transporting such containers to a location designated by the Agreement Administrator; coordinating Collection of

materials set out in new containers if new containers are provided for a subsequent Agreement; and providing other reports and data required by this Agreement.

ARTICLE 40. Contractor's Records

40.01 CONTRACTOR must maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents described in ARTICLE 16 for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

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

40.03 Any records or documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the Agreement Administrator, the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Unless an alternative site is mutually agreed upon, the records will be available at CONTRACTOR's address indicated for receipt of notices in this Agreement.

40.03.1 CONTRACTOR acknowledges that CITY is legally obligated to comply with the California Public Records Act ("CPRA"). CITY acknowledges that CONTRACTOR may consider certain records, reports, or information contained therein, ("Records") which CONTRACTOR is required to provide to CITY under this AGREEMENT, to be of a proprietary or confidential nature. In such instances, CONTRACTOR will inform CITY in writing of which records are considered propriety or confidential and shall identify the statutory exceptions to disclosure provided under the CPRA that legally permit non-disclosure of the Records. At such time as CITY receives a request for records under the CPRA or the Federal Freedom of Information Act ("FOIA") or a subpoena or other court order requesting disclosure of the Records, CITY will notify CONTRACTOR of the request, subpoena or order and of CITY's obligation and intent to provide a response within ten (10) calendar days. CONTRACTOR shall within five (5) calendar days either: (i) consent in writing to the disclosure of the Records; (ii) demand that CITY assert the CONTRACTOR identified exceptions to disclosure under the CPRA and agree in writing to indemnify, defend and hold CITY harmless from any litigation, orders or judgments arising from the non-disclosure; or (iii) seek and obtain, at CONTRACTOR's sole cost and expense, the order of a court of competent jurisdiction staying or enjoining the disclosure of the Records. If CONTRACTOR fails to timely respond, then CITY may proceed to disclose the Records in which event CONTRACTOR agrees that it waives and releases CITY of any liability for the disclosure of the Records.

40.04 Where CITY has reason to believe that such Records or documents may be lost or discarded due to the dissolution, disbandment or termination of CONTRACTOR's business, CITY may, by written request or demand of any of the above named officers, require that custody of the Records be given to CITY and that the Records and documents be maintained in City Hall. Access to such Records and documents will be granted to any party authorized by CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest.

ARTICLE 41. Entire Agreement

41.01 This Agreement and the attached Exhibits constitute the entire Agreement and understanding between the parties, and the Agreement will not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties.

ARTICLE 42. Severability

42.01 If any provision of this Agreement or the application of it to any person or situation is to any extent held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it is held invalid or unenforceable, will not be affected, will continue in full force and effect, and will be enforced to the fullest extent permitted by law.

ARTICLE 43. Right to Require Performance

43.01 The failure of CITY at any time to require performance by CONTRACTOR of any provision of this Agreement will in no way affect the right of CITY thereafter to enforce same. Nor will waiver by CITY of any breach of any provision of this Agreement be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

ARTICLE 44. All Prior Agreements Superseded

44.01 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement will be predicated upon any prior representations or agreements, whether oral or written.

ARTICLE 45. Headings

45.01 Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

ARTICLE 46. Exhibits

46.01 Each Exhibit referred to in this Agreement forms an essential part of this Agreement. Each such Exhibit is a part of this Agreement and each is incorporated by this reference.

ARTICLE 47. Attorney's Fees

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

ARTICLE 48. Effective Date

48.01 This Agreement will become effective at such time as it is properly executed by CITY and CONTRACTOR and CONTRACTOR will begin Services under this Agreement as of July 1, 2021.

ARTICLE 49. Guarantee of CONTRACTOR's Performance

49.01 [REDACTED], a [REDACTED] corporation, shall guaranty CONTRACTOR's performance of this Agreement, including any insurance obligation required under the Agreement that CONTRACTOR fulfills by means of self-insured retention. The guaranty, in substantially the form attached as **Exhibit 8**, will be provided within ten (10) business days of the effective date of this Agreement.

DRAFT

Attachment A
Collection Services Agreement

DRAFT: April 1, 2020

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

CITY OF LOS BANOS
A General Law City

CONTRACTOR

By: _____
Mike Villalta
City Mayor

By: _____
[NAME]
Chairman of the Board,
President, Vice President

ATTEST: _____
Lucille L. Mallonee
City Clerk

By: _____
[NAME]

APPROVED AS TO FORM

By: _____
[NAME]
Secretary, Assistant Secretary,
Financial Officer, Asst. Treasurer

By: _____
William A. Vaughn
City Attorney

EXHIBIT 1
Maximum Service Rates

DRAFT

EXHIBIT 2
City Sponsored Events

1. [NAME]
2. [NAME]
3. [NAME]
4. [NAME]
5. [NAME]
6. [NAME]
7. [NAME]
8. [NAME]
9. [NAME]
10. [NAME]
11. [NAME]
12. [NAME]
13. [NAME]
14. [NAME]
15. [NAME]

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EXHIBIT 3 List of City Properties	

EXHIBIT 4
Cart and Bin Specifications

1. Cart Specifications.

- 1.1. Carts must be new at the start of this Agreement.
- 1.2. Carts must be designed and manufactured with heavy plastic in accordance with standard industry specifications approved by CITY. Samples must be approved by Agreement Administrator prior to purchase and distribution.
- 1.3. Carts must be constructed with material that resists deterioration from ultraviolet radiation, and be incapable of penetration by household pets or small wildlife when lids are fully closed.
- 1.4. Carts must include wheels and handles that accommodate ease of movement by able-bodied persons.
- 1.5. Carts must include lids that continuously overlap the Cart body so as to prevent the intrusion of rainwater and minimize odors. The lids would be of a design and weight so as to prevent the Cart body from tilting backward when flipping the lid open fully and not stop when vertical.
- 1.6. Carts must be capable of being lifted into the collection vehicle without damage or distortion under normal usage.
- 1.7. Carts must be labeled using hot stamp or labels, and at a minimum will include CONTRACTOR's name and graphics indicating what materials may and may not be placed in each Cart type.

2. Bin Specifications.

- 2.1. Bins must be new at the start of this Agreement
- 2.2. Bins must be constructed of heavy metal or heavy plastic, and must be watertight and well painted.
- 2.3. Wheels, forklift slots, and other appurtenances, which are designed for movement, loading, or unloading of the container, must be maintained in good repair.
- 2.4. Bins must have a lock as part of service as specified by City Ordinance (Ord. 4760 § 2, 2004). Locking bins will be provided to all customers at no additional charge.
- 2.5. Bins must have the name and phone number of CONTRACTOR on the exterior so as to be visible when the Bin is placed for use.

- 2.6. Each Bin must be labeled with a listing of materials that may and may not be placed in a particular Bin type, and each Bin must include a conspicuous warning: "Not to be used for the disposal of hazardous, electronic, or universal waste."
- 2.7. Bid lids must be constructed of metal or heavy plastic, so as to minimize the intrusion of rainwater and minimize odors.
- 2.8. Bins must be capable of being lifted into the collection vehicle without damage under normal usage.

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<p>EXHIBIT 5 List of Approved Subcontractors</p>

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EXHIBIT 6 Sustainability Plan

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<p>EXHIBIT 7 Diversion Plan</p>

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<p>EXHIBIT 8 Corporate Guaranty</p>

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EXHIBIT 9 Detailed Rate Review Methodology

1. Detailed Rate Review Methodology

In the event that a Detailed Rate Review is requested by CITY, CITY shall notify CONTRACTOR of such request on or before the September 1 preceding the July 1 for which Service Recipient Rates are to be adjusted. CONTRACTOR shall submit its rate application on or before November 1. CITY shall complete its review (including any required CITY Council approval) and Service Recipient Rates shall be finalized by May 31.

The Detailed Rate Review will be based on CONTRACTOR's rate application, which shall contain financial statements (together with a management representation letter as to such statements) for services provided under this Agreement for the most recently completed fiscal year preceding the given November 1 rate application due date.

As part of its rate application, CONTRACTOR shall assemble and submit its forecasts of: Service Recipient Rates, revenue given such rates, annual cost of operations, pass-through costs, and profit, for the year for which Service Recipient Rates are being adjusted, together with the method used to produce such forecasts, and such information as is necessary to support the assumptions made with regard to such forecasts (such as projected population growth or migration, service or operational changes, projected changes in tonnages, known or reasonably expected cost increases, etc.). CONTRACTOR shall provide all financial information and supporting documentation required by this review in a format acceptable to CITY (or CITY's designated consultant) in a timely manner. CONTRACTOR shall not require CITY (or CITY's designated consultant) to review any such documents at CONTRACTOR's worksite, but shall instead allow for all required information and supporting documentation to be provided to CITY (or its designated consultant) via physical mail, e-mail, or any other delivery method approved by CITY.

Service Recipient Rates shall be adjusted as part of this Detailed Rate Review so as to generate sufficient Gross Revenues to CONTRACTOR to cover the sum of the forecasted annual cost of operations, profit on such forecasted annual cost of operations, and forecasted Pass-Through Costs, reviewed or calculated 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 lease expense

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

- i. **Determination of actual costs.** CONTRACTOR's financial statements will be reviewed to determine CONTRACTOR's costs for each of the foregoing categories during the

EXHIBIT 9 Detailed Rate Review Methodology

fiscal year involved. CITY will use the 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 or other obligations of CONTRACTOR under this Agreement. All costs incurred by CONTRACTOR in the performance of this Agreement not excluded under the preceding sentence shall be deemed allowable costs. The "other" cost category includes all allowable costs besides labor-related, vehicle-related and lease costs, including without limitation processing and tip fees.

Costs that are deemed non-allowable consist of the following:

- i. Corporate and technical services costs in excess of four percent (4%) of Gross Revenues. Corporate and technical services costs consist of the following corporate headquarters costs allocated to CONTRACTOR by CONTRACTOR's parent: corporate administration, environmental compliance, sustainability, corporate finance, human resources, and information technology.
- ii. Promotional, entertainment, and travel expenses in excess of \$5,000 per year, unless authorized in advance by CITY.
- iii. Fines or penalties of any nature.
- iv. Administrative Charges assessed under Section 18.04 of this Agreement.
- v. Federal or state income taxes.
- vi. Charitable or political donations.
- vii. Attorneys' 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.
- viii. Attorneys' 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, is in issue and occasions part of the attorneys' fees and expenses claimed, provided, however, such attorneys' fees will be allowed to the extent CONTRACTOR 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 attorneys' 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).
- ix. Payments to related party entities for products or services (other than lease expense, calculated as provided below), 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 company (companies) that has (have) common ownership or management control.

EXHIBIT 9
Detailed Rate Review Methodology

- b. Forecasted Costs. Allowed costs of operations for CONTRACTOR's prior fiscal year will be used as the starting point to evaluate the forecasted cost for the year for which Service Recipient Rates are being adjusted. The review will evaluate forecasted labor-related costs, vehicle-related costs, other costs, and lease expense (described in additional detail below).
- c. Labor-Related Costs. Labor-related costs will be forecasted based on projected head count and the increases provided for in CONTRACTOR's collective bargaining agreements.
- d. Lease Expense. Lease expense will be calculated using the actual purchase price of the asset, the number of years in the useful life of the asset, and the prime interest rate on the date of acquisition, assuming full amortization over the useful life of the asset. The result is the forecasted lease expense for the asset for the rate year. Useful lives are: office equipment 5 years; vehicles 10 years; Carts/Bins/Roll-off Containers 10 years; buildings and leasehold improvements 20 years.
- e. Corporate Costs. The following corporate headquarters costs allocated to CONTRACTOR by CONTRACTOR's parent shall be allowable costs: insurance, workers' compensation, pension costs, health and welfare, and regional charges. Such costs are not included in the corporate and technical services category referred to in paragraph (i) of non-allowable costs above.
- f. Pass-Through Costs. Pass-through costs will be included as allowable costs, but will not be subject to the calculation of profit as set forth below. Pass-through costs comprise:
 - i. All costs for disposal (i.e., landfill), recycling and organic and processing tipping fees; and
 - ii. All payments to CITY described in Article 4.08 of this Agreement.

Forecasted pass-through costs shall reflect scheduled increases in amounts payable to CITY.

- g. Profit. Profit or return to CONTRACTOR shall be determined by CITY applying an operating ratio so as to provide for an adequate rate of return to CONTRACTOR. For purposes of this Agreement, the CITY-determined operating ratio shall be ninety percent (90%). For purposes of determining the amount of profit, this operating ratio shall be applied to CONTRACTOR's total forecasted allowable expenses, which shall not include expenses that are identified as non-allowable expenses or as pass-through expenses (as described above). The formula for applying the operating ratio is as follows:
$$\text{operating ratio} = (\text{allowable expenses}) / (\text{allowable expenses} + \text{profit}).$$

Additional Diversion Expense. Without limiting the foregoing, if CONTRACTOR undertakes activities to increase its overall diversion level that are not specifically required to be performed by CONTRACTOR under the strict terms of this Agreement, and such activities are reasonably necessary in order to achieve the diversion requirement set forth in Article 5, then for purposes of the Detailed Rate Review such activities shall be deemed to be undertaken in the performance of the Agreement, and the costs of such activities shall be deemed to be allowable expenses.

EXHIBIT 10
Recyclable Materials Specifications

Recyclable Materials must be dry, loose (not bagged), unshredded, empty, and include ONLY the following:

<p>Aluminum cans</p> <p>PET bottles with the symbol # 1 (with screw tops only)</p> <p>HDPE plastic bottles with the symbol #2 (milk, water bottles detergent, and shampoo bottles, etc.)</p> <p>PP plastic bottles and tubs with symbol # 5 – empty</p> <p>Steel and tin cans</p> <p>Glass food and beverage containers – brown, clear, or green – empty*</p>	<p>Newspaper</p> <p>Mail</p> <p>Uncoated paperboard (ex. cereal boxes; food and snack boxes)</p> <p>Uncoated printing, writing and office paper</p> <p>Old corrugated containers/cardboard (uncoated)</p> <p>Magazines, glossy inserts and pamphlets</p>
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Non-Recyclable Materials include, but are not limited to the following:

<p>Plastic bags and bagged materials (even if containing Recyclables)</p> <p>Porcelain and ceramics</p> <p>Light bulbs</p> <p>Soiled paper, including paper plates, cups and pizza boxes</p> <p>Expanded polystyrene</p> <p>Glass and metal cookware/bakeware</p>	<p>Microwavable trays</p> <p>Mirrors, window or auto glass</p> <p>Coated cardboard</p> <p>Plastics not listed above including but not limited to those with symbols #3*, #4*, #6*, #7* and unnumbered plastics, including utensils</p> <p>Coat hangers</p> <p>Household appliances and electronics</p>
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EXHIBIT 10
Recyclable Materials Specifications

Recyclable Materials must be dry, loose (not bagged), unshredded, empty, and include ONLY the following:

<p>Hoses, cords, wires</p> <p>Flexible plastic or film packaging and multi-laminated materials</p> <p>Food waste and liquids, containers containing such items</p> <p>Exempt Waste or containers which contain Exempt Waste</p> <p>Any paper Recyclable materials or pieces of paper Recyclables less than 4" in size in any dimension</p> <p>Cartons*</p>	<p>Yard waste, construction debris, and wood</p> <p>Needles, syringes, IV bags or other medical supplies</p> <p>Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.)</p> <p>Napkins, paper towels, tissue, paper plates, and paper cups</p> <p>Propane tanks, batteries</p> <p>Aseptic Containers*</p>
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*These materials may be deemed Recyclable Materials upon written consent of CONTRACTOR, which may be withdrawn upon notice to CITY if there is no commercially viable market.



CONSULTING GROUP, INC.

RESOURCES • RESPECT • RESPONSIBILITY

Recommendation for a Solid Waste Collection Contractor



PRESENTATION TO:

Los Banos City Council

August 19, 2020

R3

CONSULTING
GROUP, INC.

Recommendation



- Enter into negotiations with Mid Valley Disposal for Residential and Commercial Garbage, Recyclable Material and Organic Waste Collection Services
- Return to City Council in October for consideration of award of Franchise Agreement

R3

CONSULTING
GROUP, INC.

Recommendation:

Why Mid Valley Disposal Ranked #1



- ❑ Central Valley based family-run collection company
- ❑ Committed to a fully staffed local Corporation Yard
- ❑ Committed to a fully staffed local Customer Service Office
- ❑ Integrated service and data tracking system from on-street collection through customer service and billing (driver tablets, cameras, on-board scales, GPS, RDIF container tags)
- ❑ Will collect and process Organic Material (food and green waste) from start of the franchise agreement

Recommendation:

Why Mid Valley Disposal Ranked #1



- ❑ Offered to process recyclables at a significantly lower cost than current and projected costs
- ❑ Offered to partner with City on potential CNG fueling station for collection vehicles
- ❑ 2 dedicated Recycling Coordinators
- ❑ Offered to assume responsibility of Commercial Billing – lowers City’s internal cost
- ❑ **Lowest overall cost of the top ranked proposers**

Recommendation:

Why Mid Valley Disposal Ranked #1



- ❑ Based on the current subscription numbers and proposed service rates, the following is the anticipated initial annual cost:
 - Mid Valley Disposal: **\$5.6M/year**
 - Republic Services: \$6.3M/year
 - Waste Management: \$7.7M/year

Please note the proposed costs do not include the cost of the closed landfill or additional costs to use the Authority's recyclables processing facility

Background



- ❑ The current Franchise Agreement with Republic Services will expire June 30, 2021
- ❑ The City is a member of the Merced County Regional Waste Management Authority:
 - The City's Garbage, Recyclable Material, and Green Waste is flow-controlled to the Authority's Facilities
 - The recyclables processing agreement between the Authority and Republic Services is set to expire in August 2020
- ❑ The City's current franchised programs do not comply with legislative requirements

R3

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Regulatory Compliance



□ Key Legislation and Program Requirements



AB 341 and 1826

*Mandatory Commercial
Recycling and Organics
Collection Requirements*



AB 1594

*Green Material Used
as Alternative Daily
Cover*

**Please note that Organics is defined as
containing both Green and Food Waste**

Regulatory Compliance



□ Key Legislation— SB 1383



Regulatory Compliance



□ Key Legislation– SB 1383

- At the latest, by January 1, 2022 jurisdictions **must** provide organics collection to **all** residential and commercial accounts
- Container labeling and colors
- Conduct community outreach
- Contamination monitoring
- Enforcement

R3

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GROUP, INC.

Key Points of New Agreement



- ❑ Ten-year base term with City option to extend
- ❑ Compliant with all legislative requirements
 - Bundled recycling and organics (green and food waste) for all customers
 - New containers that are color and labeling compliant
 - Diversion from landfill guarantees
 - Contamination and reporting requirements
 - Substantial emphasis on Customer outreach and education
- ❑ New collection trucks and containers
- ❑ CPI Rate Adjustment with 3.5% cap
- ❑ Performance Bond increased to \$1.5M to cover 2 months of operations (current amount is \$100K)

Key Points of New Agreement



- ❑ Contractor must offer employment to all displaced workers
- ❑ 4 Residential curbside bulky waste collections, including E-Waste, at **no cost**
- ❑ Increased curbside bulky waste collection Increased community clean-up days from 2 to **4 per year**, with free paper shredding
- ❑ 2,000 CY mulch or 1,000 CY compost delivered to City

Key Points of New Agreement



□ Sustainability Support Services:

- 40% – 55% franchised hauler diversion requirement
- Assist in 75% CalRecycle diversion goal
- Support for edible food recovery
- Dedicated Sustainability Staff
- Dedicated Web site
- Annual recycling awards
- Commercial on-site waste audits / “right size” service types and volumes
- Recycling /Organics education support to public schools
- Attend and provided free services City sponsored events

Key Points of New Agreement



- ❑ Specific performance standards and ability for the City to levy administrative charges for non-performance:
 - Operating hours
 - Overweight vehicles
 - Vehicle spills
 - Missed collections
 - Late/in accurate reports
 - Not meeting diversion requirements

RFP Process



- ❑ April 1, 2020 - Request For Proposal released
- ❑ May 27, 2020 - 6 proposals received:
 - Caglia Environmental
 - Gilton Solid Waste Management, Inc.
 - GreenWaste Recovery, Inc.
 - Mid Valley Disposal
 - Republic Services
 - Waste Management

RFP Process



- ❑ An Evaluation Team was selected, four evaluators from the City and two from R3
- ❑ An initial Pass/Fail process was conducted:
 - Gilton Environmental was determined to be non-responsive to the City's RFP and was not included in further evaluation
- ❑ The remaining proposals were reviewed using the RFP criteria:
 - Qualifications
 - Technical Approach
 - Sustainability
 - Service Recipient Rates

Evaluation Results



- ❑ Each Evaluation Team Member individual scored each proposal
- ❑ Individual scores were totaled to develop an overall ranking:

Contractor	Total Score
1. Caglia Environmental	1,305
2. GreenWaste Recovery, Inc.	1,271
3. Mid Valley Disposal	1,459
4. Republic Services	1,306
5. Waste Management	1,338

Evaluation Results



- ❑ The City chose to proceed with interviews with the top two proposers and the incumbent proposer:
 1. Mid Valley Disposal
 2. Waste Management
 3. Republic Services (incumbent)
- ❑ Interviews were conducted on July 16th and 17th
- ❑ Each Evaluation Team Member ranked Mid Valley Disposal #1

Based on the scoring and interviews, Mid Valley Disposal is the Top-Ranked Proposer

Recommendation



- Enter into negotiations with Mid Valley Disposal for Residential and Commercial Garbage, Recyclable Material and Organic Waste Collection Services
- Return to City Council in October for consideration of award of Franchise Agreement

R3

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Questions and Answers

R3

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City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor & City Council Members

FROM: Mark Fachin, P.E., Public Works Director/City Engineer 

DATE: August 19, 2020

TYPE OF REPORT: Agenda Item

SUBJECT: Requesting a Solid Waste Landfill Tipping Fee Study and a Policy on the Flow Direction Policy of Solid Waste Recycling and Plant Material

Recommendation:

That the City Council adopts the Resolution requesting that the Merced County Regional Waste Authority (RWA) do the following:

1. Performs a study that researches and reviews the existing landfill tipping fees at the two landfills.
2. Establishes and follows a Waste Stream Flow Control Policy of solid waste, recycling and plant material that is equitable and consistent for all the RWA jurisdictions.

Background:

Currently as shown in the Attachment to this staff report, the tipping fee for the eight municipal and franchise collectors in the RWA are not the same amount. The tipping fees range from a high of \$40.21 per ton (for City of Los Banos & City of Merced) to a low of \$31.43 per ton (City of Dos Palos). Per a power point presented to the City Council by RWA staff, this tipping fee structure has been in place since July 1, 2013.

Per Article 6 of the attached Merced County Regional Waste Management Authority (MCRWMA) Third Amended and Restated Joint Powers Agreement, dated July 18, 2013, the Authority is 'to direct the flow of solid waste, recycling and plant material

generated within the member's respective jurisdiction to the Authority's solid waste facilities.'

This policy is also supported by a legal opinion by the RWA's Attorney in the attached letter from Robert T. Hedden to MCAG Executive Director dated June 14, 2013.

Discussion:

Staff is recommending that a study be undertaken by the RWA that researches and reviews the existing landfill tipping fee.

The goal of this study is to review the landfill tipping fee and develop options for a tipping fee for consideration by the MCAG board.

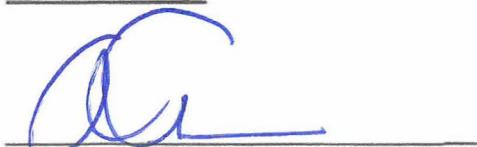
Staff is also recommending that a policy be developed by RWA that establishes a waste stream flow control policy that is equitable and consistent for all the RWA agencies.

Currently, as shown on the attachment as provided by RWA staff labeled MCRWMA – Flow Control Assessment 2020 Chart, three of the RWA member jurisdictions do not send their green waste to either of the Authorities' landfills. This is contrary to the previously referenced Joint Powers Agreement and legal clarification letter regarding waste stream flow control.

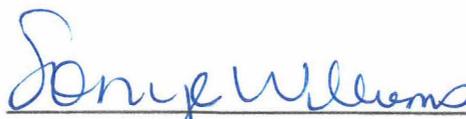
Fiscal Impact:

The fiscal impact of a landfill tipping study and a policy in regards to the waste stream flow control cannot be determined until these items are done.

Reviewed by:



Alex Terrazas, City Manager



Sonya Williams, Finance Director

Attachments:

Resolution

Landfill Tipping Fee Chart per ton as provided by RWA staff

MCRWA Third Amended and Restated Joint Powers Agreement

Letter dated June 14, 2013 from Robert T. Hedden to MCAG Executive Director
regarding Waste Stream Flow Control

MCRWA- Flow Control Assessment 2020 Chart- as provided by RWA staff

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS REQUESTING THAT THE MERCED COUNTY REGIONAL WASTE AUTHORITY (RWA) DO THE FOLLOWING: 1. PERFORM A STUDY THAT RESEARCHES AND REVIEWS THE EXISTING LANDFILL TIPPING FEES AT THEIR TWO LANDFILLS 2. ESTABLISHES AND FOLLOWS A WASTE STREAM FLOW CONTROL POLICY OF SOLID WASTE, RECYCLING AND PLANT MATERIAL THAT IS EQUITABLE AND CONSISTENT FOR ALL THE RWA JURISDICTIONS

WHEREAS, the current landfill tipping fees as established by RWA is inconsistent among the RWA's jurisdictions; and

WHEREAS, the current landfill tipping fee for the RWA jurisdictions varies from a high of \$40.21 per ton to a low of \$31.43 per ton; and

WHEREAS, the current Joint Powers Agreement states that the entire waste stream direction of flow is to be to the Authorities Solid Waste Facilities; and

WHEREAS, currently there are three RWA jurisdictions who do not use the Authority's Solid Waste Facilities for their green waste.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Los Banos does hereby request that the Merced County Regional Waste Authority (RWA) do the following:

1. Perform a study that researches and reviews the existing landfill tipping fees at their two landfills, and;
2. Establishes and follows a waste stream flow control policy of solid waste, recycling and plant material that is equitable and consistent for all the RWA jurisdictions.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on the 19th day of August 2020, by Council Member _____ who moved its adoption, which motion was duly seconded by Council Member _____ and the Resolution adopted by the following vote:

AYES:
NOES:
ABSENT:

APPROVED:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk

MUNICIPAL AND FRANCHISE COLLECTORS	EFFECTIVE DATE OF RATE					
	8/1/2006	7/1/2009	7/1/2010	7/1/2011	7/1/2012	7/1/2013
City of Merced	\$31.21	\$32.83	\$34.54	\$36.34	\$38.23	\$40.21
City of Atwater	\$29.09	\$30.60	\$32.19	\$33.87	\$35.63	\$37.48
City of Livingston	\$26.54	\$27.92	\$29.37	\$30.90	\$32.51	\$34.20
City of Los Banos	\$31.21	\$32.83	\$34.54	\$36.34	\$38.23	\$40.21
City of Gustine	\$26.95	\$28.35	\$29.83	\$31.38	\$33.01	\$34.72
City of Dos Palos	\$24.39	\$25.66	\$26.99	\$28.40	\$29.87	\$31.43
County Areas 1-5	\$28.39	\$29.87	\$31.42	\$33.05	\$34.77	\$36.58
County Areas 6 & 6A	\$27.15	\$28.56	\$30.05	\$31.61	\$33.25	\$34.98

ROBERT T. HADEN
EMILY J. HADEN

LAW OFFICES OF
ROBERT T. HADEN
PROFESSIONAL CORPORATION
2241 "N" STREET
MERCED, CALIFORNIA 95340-3614

Phone: (209) 723-3247
Fax: (209) 723-5288
E-Mail: hadenpc@pacbell.net

June 14, 2013

E-MAIL ONLY

Marjie Kirn, Executive Director
Merced County Regional Waste Management Authority
369 West 18th Street
Merced, CA 95340

RE: Joint Powers Agreement and Bond Covenants
Re Flow Control

Dear Marjie:

At your request, I reviewed the Joint Powers Agreement with regard to the flow control issue. Flow control, which is to say the requirement that solid waste recycling and plant material generated within the service area be directed to the two landfills, is an important issue both from the perspective of the Joint Powers Agreement itself, and in terms of the bond covenants. When the bonds were issued, it was based upon the Authority's commitment that it exercise flow control in the service area. If the Authority does not exercise flow control, then the bond covenants may be deemed to be breached, and the bonds could either be downgraded or defaulted.

The JPA agreement at Article 6, Section 6.1(a), provides that the Authority has a commitment and agreement to direct the flow of solid waste recycling and plant material generated within each member's (each city and the county) respective jurisdiction to the Authority's solid waste facilities for a period of time which shall minimally be until December 31, 2036. The agreement further provides in Section 7.1(p), that, "to the extent permitted by law, [the Authority is authorized] to require Members to direct all of their Solid Waste, Recyclable Material and Plant Materials generated and Collected by Collectors within their respective boundaries to the Facilities." That is unequivocal.

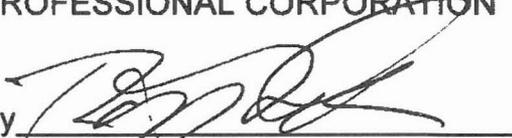
With regard to solid waste diversion, the Authority is designated as the administering agency for implementing regional agency programs and reporting and tracking solid waste diversion programs on behalf of the member agencies.

There are additional provisions which may bear on this issue, but I think I have covered the primary ones. If need be, I will be happy to discuss this subject further at the Board meeting on June 20, 2013. If you have any questions about these matters, please feel free to call me. I am,

Sincerely,

ROBERT T. HADEN,
PROFESSIONAL CORPORATION

By



ROBERT HADEN

RTH:dkc
Enclosure

MERCED COUNTY REGIONAL WASTE MANAGEMENT AUTHORITY
THIRD AMENDED AND RESTATED JOINT POWERS AGREEMENT

This Third Amended and Restated Joint Powers Agreement is effective this 18th day of July, 2013, between the County of Merced, the City of Merced, the City of Los Banos, the City of Atwater, the City of Livingston, the City of Dos Palos, and the City of Gustine. This Agreement supersedes the original Joint Powers Agreement dated April 11, 1972, as amended and restated on January 16, 2007, and thereafter amended on August 16, 2007 and December 13, 2012. Terms beginning with capital letters are defined in Exhibit A. The County and cities are collectively referred to as the Agencies. The Authority shall continue pursuant to the Act.

RECITALS

1. The Agencies are responsible for the health and safety of their citizens, and to that end regulate Solid Waste, Recyclable Material, and Plant Material Collection in areas under their jurisdiction and, except for the City of Merced which is a municipal collector, they award franchises for Collection to private organizations, all of which are referred to as Collectors.

2. The Agencies find it in their mutual economic interest to address Solid Waste and Recycling issues on a regional level so that the costs for planning and implementing Solid Waste and Recycling programs are based on a fair and equitable allocation system that considers all the relevant factors and to share Solid Waste Diversion percentages to meet the waste reduction mandates of the CIWMA, as a region.

3. Each Agency has been a Member of the Merced County Solid Waste Policy Board and has enjoyed the benefits of such Membership and has directed that its Solid Waste be processed at the Facilities.

4. Solid Waste from each Agency is land-filled at either the Billy Wright Landfill west of the City of Los Banos or at the Highway 59 Landfill north of the City of Merced.

5. The Agencies wish to possess common ownership over the Facilities which shall be formally transferred to the Authority at the next permit review by the CIWMB.

6. Each Agency has the individual power to plan, acquire, construct, manage, regulate, operate, and control Facilities and operations for the Collection, Transportation, Processing, and Disposal of Solid Waste, Recyclable Material and Plant Material generated within its jurisdictional boundaries, as well as to create and issue franchise agreements for such activities.

7. The California Joint Exercise of Powers Law (Government Code section 6500, et seq.) permits two or more public agencies to exercise jointly any power that the agencies could exercise separately and also grants certain additional powers to a Joint Powers Authority.

8. The Agencies desire to establish and confer upon a separate legal entity, the Merced County Regional Waste Management Authority, the powers necessary to enable them to expand and operate Solid Waste Facilities for the benefit of all the Agencies, to achieve their waste Diversion goals, to comply with the California Integrated Waste Management Act, and to arrange for Disposal of remaining Solid Waste.

9. The Agencies intend for the Authority to issue Revenue Bonds and other indebtedness to pay for the operation, construction, acquisition, rehabilitation and expansion of Solid Waste Facilities.

WHEREFORE, the Agencies do continue the Joint Powers Authority now known as the Merced County Regional Waste Management Authority for the purpose of owning, financing, administering, and operating Solid Waste Facilities

and for administering rates for Solid Waste and Diversion programs and do agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified in Exhibit A, which is attached and incorporated by this reference.

ARTICLE 2. PURPOSE

2.1 This Agreement is made pursuant to the Act to provide for the joint exercise of certain powers common to the Agencies and the additional powers granted under the Act. The purpose of this Agreement is to provide for the joint planning, adoption, financing, administration, and operation of the Facilities, and for the joint planning, adoption, financing, administration, management, review, monitoring, enforcement, and reporting of Solid Waste, Recyclable Material, and Plant Material Collection activities in the Service Area. By entering this Agreement, the Agencies earn economic benefits not realized when using alternate means of Transport and Processing of Solid Waste, Recyclable Material and Plant Materials and Disposal of Solid Waste. Further, the continuation of the Authority provides for the economic viability and utilization of the Facilities.

ARTICLE 3. CONTINUATION OF AUTHORITY

3.1 Continuation. Pursuant to the Act, the Agencies continue the public entity known as the Merced County Regional Waste Management Authority.

3.2 Separate Entity. The Authority shall be a public entity separate from the Agencies.

3.3 Assets, Rights and Liabilities. The assets, rights, debts, liabilities, and obligations of the Authority shall not constitute assets, rights, debts, liabilities, or obligations of any of the Agencies. However, nothing in this Agreement shall prevent any Agency from separately contracting for, or assuming responsibility for,

specific debts, liabilities, or obligations of the Authority, provided that both the Board and that Agency approve such contract or assumption.

ARTICLE 4. TERM

4.1 Effective Date. This Agreement shall be dated as of and become effective on the date of its execution by the last Agency to adopt it.

4.2 Term. This Agreement shall continue at least until December 31, 2036, or until such time as all Revenue Bonds and other indebtedness and the interest thereon shall have been paid in full, and thereafter shall continue until terminated or dissolved by a vote taken in accordance with Article 13 of this Agreement. However, in no event shall the Members vote to terminate or dissolve the Authority if its termination or dissolution would conflict with or violate the terms or conditions of any bonds, financial instruments, or related documentation by or on behalf of the Authority, including, without limitation, indentures, resolutions, and letter of credit agreements.

ARTICLE 5. BOUNDARIES

5.1 Service Area. The Authority shall exercise its powers within its Service Area. If an Agency withdraws from the Authority, the boundary of the Authority shall be modified to exclude the area of the withdrawing Agency. Such withdrawal and redrawing of boundaries shall not prevent any Facilities from being located outside of the boundary of the Service Area.

ARTICLE 6. MEMBERSHIP REQUIREMENTS

6.1 Required Powers. Each Member of the Authority must at all times have the following powers:

a. The authority, commitment and agreement to direct the flow of Solid Waste, Recycling and Plant Material generated within the Member's respective jurisdiction to the Authority's Solid Waste Facilities for a period of time which shall minimally be until December 31, 2036, or such further period of time necessary to

repay certain Revenue Bonds and other indebtedness to be issued by the Authority to expand and operate the Facilities.

b. The authority to set rates sufficient to provide for the financing and operation of the Authority Facilities.

c. The authority, by law, to enter into this Agreement.

ARTICLE 7. POWERS

7.1 Authority Powers. The Authority is authorized, but is in no way required, to act in its own name on any or all of the following matters, as each Member could act separately, and as it deems in the best interest of its Members, to the extent permitted by any and all applicable laws, codes, ordinances, resolutions and regulations, subject only to such restrictions upon the manner and exercise of such power as are imposed upon the County of Merced in the exercise of similar powers:

(a) Acquire, construct, rehabilitate, expand, finance, refinance, operate, regulate, and maintain Facilities.

(b) Acquire, improve, hold, lease, and dispose of real and personal property of all types.

(c) Plan, study, and recommend proper and appropriate Solid Waste Recyclable Material and Plant Material, Transport and Processing management practices. Research and study issues related to Solid Waste generation, Collection, Processing, Diversion, and Disposal, including, but not limited to, source reduction, re-use, Recycling, and recovery.

(d) Resolve disputes between the public and any entities providing Solid Waste, Recycling Material and Plant Material transportation and Processing services.

(f) Plan, design, and implement programs that address Processing and Diversion requirements of the CIWMA.

(g) Educate the public as to Solid Waste, Diversion and Recycling matters.

(h) Provide for or enter into agreements to provide for financial, engineering, legal, audit and any other professional services supporting any of the Authority's programs, including, but not limited to, Solid Waste, Recycling Material and Plant Material, Transport and Processing Facility operations and Disposal. Such agreements can be made with any person, including any Member.

(i) Accept gifts, donations, advances and contributions and act as regional lead jurisdiction/applicant and grant administrator for grants, including block grants, in the name of Members/regional participants.

(j) Hire agents and employees.

(k) Sue and be sued in its own name.

(l) Incur and discharge debts, liabilities and obligations.

(m) Issue bonds or notes and incur other forms of indebtedness, and make associated covenants, for designated purposes, subject to the provisions and limitations of the California Constitution and the Government Code.

(n) Establish rates and fees at Solid Waste, Recyclable Material and Plant Material Transport and Processing Facilities.

(o) Adopt, as authorized by California law, ordinances and resolutions necessary to carry out the purposes of this Agreement.

(p) To the extent permitted by law, require Members to direct all of their Solid Waste, Recyclable Material and Plant Materials generated and Collected by Collectors within their respective boundaries to the Facilities.

(q) Implement programs as directed by the Board, such as, but not limited to, the following programs on behalf of the Member Agencies: 1) regional material recovery site locations at the Highway 59 Landfill and Billy Wright Landfill including buyback/drop-off centers; 2) regional yard waste composting facilities; 3)

Construction and Demolition Recycling transfer facilities; 4) a Countywide Recycling market development zone; 5) a Countywide education and public information program to be performed by Merced County Association of Governments in accordance with the approved budget/work program; and 6) other programs not inconsistent with this Agreement.

(r) By majority vote of the Board, add new Member Agencies from within the County of Merced.

(s) Member Agencies hereby assign to the Authority their rights and obligations with respect to the facilities (including the right to collect charges for use of the facilities) as of the effective date.

(t) Any additional power granted to joint exercise of powers agencies under the Act.

(u) All powers necessary to the exercise of the enumerated powers.

ARTICLE 8. MEMBER AGENCIES

8.1 Obligations of Member Agencies.

(a) Ensure that waste Collected by Collectors within their jurisdiction is disposed of in a Facility.

(b) Implement the specific Diversion programs selected for implementation in the Member's respective source reduction and Recycling element or the regional source reduction and Recycling element if adopted by the Authority.

(c) Delegate to the Authority disposal and non-disposal responsibilities over Solid Waste.

(d) Subject to Article 11(e), each Member of the Authority shall be liable for civil penalties which may be imposed against it by the CIWMB. With regard to penalties imposed against the Authority, the Board shall have the authority, subject to the limitations of Article 11(e), to assess the Members.

(e) Member Agencies may make contributions and advances and be repaid therefor pursuant to Section 6504 of the Act.

ARTICLE 9. OPERATIONS OF FACILITIES

9.1 Solid Waste Handling and Disposal. Subject to policy direction by the Board, the Authority shall manage, operate and administer the Facilities and execute the Solid Waste Recycling and Disposal responsibilities associated therewith.

9.2 Solid Waste Diversion. The Authority is the administering agency for implementing regional agency programs and reporting and tracking Solid Waste Diversion programs on behalf of the Member Agencies.

9.3 Facility Use and Planning. The Authority will prepare a development plan for operational requirements and an ultimate use plan for the Facilities and will be the applicant of record for disposal standards assigned Facilities by regulatory agencies. The Authority will plan and install the necessary physical features for the Facilities, such as landscaping, fencing, water supply, access road and scales. The Authority shall furnish the personnel and equipment and shall operate the Facilities using the best approved standards and practices.

9.4 Payment of Fees. The Authority shall refuse to permit any person, firm or public agency the right to dispose of refuse at Facilities if such person, firm or public agency fails to pay the required fees or comply with the rules and regulations established and enforced by the Authority.

9.5 Solid Waste From Outside the Service Area. The Authority may permit disposal of Solid Waste from an area outside the Service Area if the origin of said Solid Waste is duly reported in conformity with the CIWMB disposal reporting system, and if, in the opinion of the Authority, accepting such Solid Waste at the Facility would not be detrimental to the operation of the Facility.

9.6 Budget/Work Plan. The Authority shall prepare and submit for Board approval a yearly budget/work plan for the ensuing fiscal year. In accordance with the approved budget/work plan, the Authority may approve warrants or payment by the Auditor from the funds on deposit with the Treasurer. Notwithstanding the foregoing, the Authority shall be authorized to make emergency expenditures which shall thereafter be reported at the next Authority Board meeting.

9.7 Solid Waste Disposal Fees. The Authority shall establish fees and charges at levels sufficient to:

- (a) Pay the current cost of maintenance, including administration and overhead;
- (b) Pay the cost of improvements and equipment;
- (c) Pay all authorized costs associated with the budget plan, reimburse all authorized costs associated with operation of the Facilities, and pay civil penalties which are validly assessed by the CIWMB;
- (d) Pay all debt service of Revenue Bonds and other indebtedness in compliance with all bond related covenants; and
- (e) Provide future capital needs.

ARTICLE 10. ORGANIZATION

10.1 The Board. The Authority shall be governed by the Board, which shall exercise or oversee the exercise of all powers and authority on its behalf. The Board shall meet not less than once yearly and all meetings shall be called, noticed and conducted subject to the Brown Act.

10.2 Directors.

(a) The Board shall consist of each of the five Merced County Supervisors and one elected legislative official from each of the other Member Agencies. As of the date hereof, there are 11 voting Members. No Person shall be eligible for appointment to the Board unless he or she is serving in an elective

position. Each of the city Agencies may appoint one elective Person as an alternate to serve in the absence of an appointed director. Directors and alternate Directors who have been duly appointed and are serving at the time of the restatement of this Agreement may continue to serve in that capacity without any further action of the Member Agency.

(b) Each Director shall hold office from the first meeting of the Board after appointment by the Member Agency until his or her successor is selected by such Member Agency.

10.3 Principal Place of Business. The principal place of business of the Authority shall be located at 369 W. 18th Street, Merced, California, 95340.

10.4 Officers.

(a) The Board shall select a Chair and a Vice Chair from among the Directors who shall hold office for a period of one year commencing July 1st. The Chair and Vice Chair shall alternate between the Chair of the Merced County Board of Supervisors and a city Agency Member. The positions shall rotate and there shall be no consecutive terms.

(b) Executive Director. The Authority Board shall utilize an Executive Director who shall be the chief executive officer of the Authority. In lieu of special appointment, the Executive Director shall be the Executive Director of the Merced County Association of Governments. The Executive Director shall plan, organize and direct the administration and operations of the Authority.

(c) Secretary. The Authority Board shall utilize the services of a Secretary who in lieu of special appointment shall be the Secretary of the Merced County Association of Governments.

(d) General Counsel. In the absence of special appointment by the Authority Board, the General Counsel of Merced County Association of Governments shall serve as General Counsel to the Authority.

10.5 Designation of Law. As required by section 6509 of the Act, and in the absence of conflicting procedural rules, ordinances and resolutions adopted by the Authority Board, the procedural rules, ordinances and resolutions of the County of Merced are the governing law for the Authority.

ARTICLE 11. FINANCIAL MATTERS

11.1 Financial Matters.

(a) Budget. Prior to July, the Board shall adopt an annual budget for the ensuing Fiscal Year.

(b) Treasurer. The Chief Financial Officer of Merced County Association of Governments shall be the Treasurer of the Authority pursuant to Government Code section 6505.6 and shall do all of the following:

(1) Receive and receipt for all funds of the Authority and place them in the treasury of the Treasurer so designated to the credit of the Authority;

(2) Be responsible, upon his or her official bond or insurance policy, for the safekeeping and disbursement of all Authority money so held by him or her;

(3) Pay, when due, all sums payable with respect to outstanding Revenue Bonds and other indebtedness of the Authority; and

(4) Pay any other sums due from the Authority only upon warrants of the public officer performing the functions of auditor or controller who has been designated by this Agreement.

(c) Auditor. The Chief Financial Officer of Merced County Association of Governments shall perform the functions of Auditor of the Authority pursuant to Government Code section 6505.6 and shall do all of the following:

(1) Contract for an annual audit of the accounts and records of the Authority. The minimum standards of the audit shall be those prescribed for special districts under Section 26909 of the Government Code and shall conform to

generally accepted auditing practices. A report of the audit shall be filed as public record with each of the Agencies within 12 months of the end of the Fiscal Year under examination. Any costs in making an audit in accordance with this Agreement shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

(2) Draw warrants to pay demands made against the Authority when the demands have been approved by any authorized Person.

(3) Provide an official bond or insurance policy with the Authority in an agreed amount pursuant to Section 6505.1 of the Act.

(d) Penalties.

(1) Any penalties assessed against the Authority by CIWMB which are not Diversion related, shall be paid by the Authority.

(2) Any penalties assessed against the Authority by CIWMB which are Diversion related, shall be paid by the Authority and assessed against and collected from Member Agencies based upon a formula pursuant to which one-third of the penalty will be assessed equally against each Member Agency, one-third will be assessed or credited based on each Member Agency's per capita program Diversion and one-third based on each Member jurisdiction's population.

(3) Any penalties assessed against a Member Agency by CIWMB directly for either Diversion or nondiversion related acts or omissions, shall be paid by such Member Agency.

(4) The foregoing penalty structure may not cover all penalty issues which arise. Accordingly, despite the fact that substantive changes to the Agreement generally require the approval of each Member Agency, penalty provisions not covered by (1) – (3) above may be added by a two-thirds vote of the Board.

(e) Liability Insurance.

(1) The Authority shall maintain general liability insurance, environmental insurance coverage and vehicle insurance coverage relating to its ownership and operation of the Facilities.

(2) The Authority shall, directly or indirectly, maintain liability insurance or self-insurance relating to its contractual obligations pursuant to this agreement, covering its management, operation and administration of the Facilities and shall indemnify, protect, defend and hold harmless all other agencies from claims and suits arising from the operation of the Facilities. The indemnity herein shall include Environmental Laws directly relating to the operation of the Facilities.

(3) Each Agency shall directly or indirectly maintain general liability insurance relating to Collection and Transport of Solid Waste, Recyclable Material, and Plant Material from its jurisdiction to the Facilities and shall indemnify, protect, defend and hold harmless all of the other Agencies therefrom. This indemnity shall include Environmental Laws as herein defined.

(4) Notwithstanding Government Code section 895, et seq., liability imposed on the Authority, or any Member, relating to operation of the Facilities, shall be apportioned proportionately among all Member Agencies based upon population.

(f) Investment Policy. The Investment Policy of the Authority shall be the Investment Policy of MCAG.

ARTICLE 12. WITHDRAWAL FROM THE AGENCY

12.1 Withdrawal Conditions. A Member may not withdraw from the Authority unless and until that Member achieves the following:

a. The liquidation in full of its proportion of any and all existing debts, obligations and liabilities incurred, earned, or expected to be earned by the date of withdrawal, including, but not limited to, the Revenue Bonds and other indebtedness, if any, as determined by the Board. The liabilities of a withdrawing

Member shall specifically include those resulting from acts or omissions when the withdrawing Member was a participating Member of the Authority.

b. The provision to the Authority of a written notice of intent to withdraw from the Authority at least twelve (12) months prior to the end of the current Fiscal Year, specifying the date on which the Member intends to withdraw.

c. The approval of such withdrawal by a two-thirds affirmative vote of the Board.

ARTICLE 13. TERMINATION

13.1 Termination Requirements. This Agreement may only be terminated by consent of all Members, and upon full and complete liquidation of all liabilities, including, but not limited to, the Revenue Bonds and other indebtedness, if any. Upon the date of termination ("Termination Date"), payment of any and all obligations and division of any and all assets of the Authority shall be conducted subject to the then applicable requirements of the law (currently Section 6511, et seq., of the Act) as follows:

(a) In the event of termination of the Authority where there is a successor public entity that will conduct all of the activities and assume all of its obligations, any and all Authority assets and liabilities remaining upon termination shall be transferred to the successor public agency.

(b) If there is no successor public agency that would conduct the Authority's activities, all assets and liabilities, including surplus money, shall be apportioned to each Member in proportion to population.

(c) If there is a successor public agency that would conduct some of the Authority's activities, then the Board shall allocate the Authority's assets and liabilities, including surplus money, between the successor public agency and the Members. In such case the Member's portion of the allocation shall be based on subparagraph (b) above.

(d) By unanimous agreement of the Members, assets and liabilities may be disposed of, divided or distributed on a basis different from that established in this Article 13.

ARTICLE 14. BYLAWS

14.1 Bylaws. Bylaws may be adopted by the Board pursuant to which meetings of the Board shall be called. The Bylaws shall contain appropriate provisions for the transaction of business and describe the duties and powers of the Chair and Vice Chair and such other officers as may be appointed. The Bylaws may be amended from time to time by majority vote of the Board after notice in accordance with the Bylaws.

ARTICLE 15. AMENDMENTS

15.1 This Agreement may only be amended by the affirmative vote of two-thirds of the Members of the Board of Directors, except that Article 13 may not be amended without the agreement of all the Members. Furthermore, no amendment may add to the duties or obligations of a Member without the agreement of such Member.

ARTICLE 16. MISCELLANEOUS

16.1 Filing with the Secretary of State. All notices required by Government Code §§6503.5 and 53051 shall be filed by the Authority with the California Secretary of State.

16.2 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of each Member. Notwithstanding the foregoing, no Member may assign any right or obligation hereunder without the written consent of all other Members.

16.3 Severability. If any provision of this Agreement or its application to any Person or circumstances is held invalid or illegal by a final judgment of a court

law in the State of California, the remainder of this Agreement and the application of the provision to other Persons or circumstances shall not be affected.

16.4 Headings. All section headings contained in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any provision of this Agreement.

16.5 Conflict of Interest Code. The Authority shall adopt a conflict of interest code.

16.5 Arbitration. The Members desire to avoid the expense and delay associated with litigation, and therefore agree to submit any and all disputes which cannot be resolved by a good-faith effort to meet and confer to binding arbitration pursuant to the following terms. Despite the fact that such binding arbitration is pursuant to contract, it shall be conducted based on local (Merced County) and state rules of judicial arbitration. There shall be one arbitrator. He or she shall be chosen from the then active list of arbitrators maintained by the Merced County Superior Court Arbitration Administrator. The party seeking arbitration shall commence the case with a letter request which shall set forth, in clear and concise terms, the nature of the dispute and shall further list three names from the above-mentioned list of arbitrators agreeable to the requesting party. Within five days the other party shall select one of the listed attorneys, or submit a list of three names to the requesting party, who may within five days select one of the other parties' listed attorneys. If the parties cannot agree on the arbitrator, they shall submit the issue of appointment to the Presiding Judge of the Merced County Superior Court as though it is an ex parte hearing. None of the previously listed attorneys may be selected as an arbitrator. The arbitrator shall set the matter for hearing within sixty (60) days of his or her appointment. After submission of the matter the arbitrator shall issue a decision within ten (10) days. The decision of the arbitrator shall be

final and binding, and may be enforced as a judgment in the Merced County Superior Court.

IN WITNESS WHEREOF, the Board Members have caused this Agreement to be duly executed and attested by the Board Chair as of the date set forth below.

Date: July 18, 2013

MERCED COUNTY REGIONAL
WASTE MANAGEMENT AUTHORITY

By: 
Jerald R. O'Banion, Chair

EXHIBIT A

DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified below.

Act

"Act" means the California Joint Exercise of Powers Law (California Government Code Section 6500 et seq.)

Agency/Agencies

"Agency/Agencies" means the public entities which are or have been Members of the Authority.

Agreement

"Agreement" means this Second Amended and Restated Joint Exercise of Powers Agreement, as it may be amended from time to time.

Auditor

"Auditor" means the Chief Financial Officer of Merced County Association of Governments.

Authority

"Authority" means the Merced County Regional Waste Management Authority.

Board

"Board" means the governing Board of Directors of the Authority, consisting of the five Members of the Merced County Board of Supervisors and one Mayor or Council person from each of the six incorporated municipal Agencies, for a total of 11 Directors as more fully described in Article 10 of this Agreement.

Chair

"Chair" means the Chair of the Authority Board, as described in Article 10 of this Agreement and the Bylaws.

CIWMA

"CIWMA" means the California Integrated Waste Management Act of 1989 (California Public Resources Code, §40000, et seq.), and all regulations adopted under that Legislation, as that Legislation and those regulations may be amended from time to time.

CIWMB

"CIWMB" means the California Integrated Waste Management Board created under the provisions of the CIWMA, whose duties include implementing the CIWMA.

Collect/Collection

"Collect/Collection" means to take physical possession, transport and remove Solid Waste, Recyclable Materials and Plant Materials within and from the Service Area.

Collector

"Collector" means a private enterprise which holds a franchise from an Agency for Solid Waste Collection and the City of Merced, a Municipal Collector.

Director

"Director" means the Agency representatives who serve on the governing Board of Directors.

Disposal

"Disposal" means the ultimate disposition of Solid Waste received by Collector at a Facility in Full Regulatory Compliance.

Diversification

"Diversification" means the separation of materials from the overall Solid Waste stream and whose disposition is for reuse or Recycling and not landfill disposal.

Effective Date

"Effective Date" means the effective date of this Agreement, which is July 18, 2013.

Environmental Laws

"Environmental Laws" means all federal and state statutes; and all county, local, and Agency ordinances concerning public health, safety, and the environment including, by way of example and not limitations, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC §9601, et seq.; the Resource Conservation and Recovery Act, 42 USC §6902, et seq.; the Federal Clean Water Act, 33 USC §1251, et seq.; the Toxic Substances Control Act, 15 USC §1601, et seq.; the Occupational Safety and Health Act, 29 USC §651, et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100, et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000, et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5, et seq.; the California Integrated Waste Management Act, California Public Resources Code §40000, et seq., as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

Facility/Facilities

"Facility/Facilities" means any plant or site, existing or planned, owned or leased, and constructed, maintained, operated, or used for purposes of performing under this Agreement and includes any future Facility. As of the Effective Date, the Facilities are: The Billy Wright Landfill, located west of the City of Los Banos, and the Highway 59 Landfill, located north of the City of Merced.

Fiscal Year

"Fiscal Year" means the period commencing on each July 1 and ending on the following June 30.

Franchise

"Franchise" means the special right granted by an Agency to operate a public utility for Solid Waste Collection and Processing services within the Service Area.

Full Regulatory Compliance

"Full Regulatory Compliance" means compliance with all applicable permits for a Facility such that the Authority will at all times maintain the ability to fully comply with its obligations under this Agreement.

Legislation

"Legislation" means any code, ordinance, resolution, or any other forms or enactment of the Agencies or any Member which now exists or which may hereafter be adopted which constitutes law or regulation.

Member

"Member" means any one of the public entities listed in Exhibit B and any public entity that becomes a new member in accordance with this Agreement.

Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, special purpose district, town, city, county, state, or the United States.

Plant Materials

"Plant Materials" means a subset of Recyclable Materials consisting of grass cuttings, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees (not more than six (6) inches in diameter), and similar organic materials generated at residential, commercial, industrial and institutional properties within the Service Area, separated and set out for Collection, Processing, and Recycling. Plant Materials does not include materials not normally produced from gardens or landscapes, such as, but not limited to, palm fronds, brick, rock, gravel, large quantities of dirt, concrete, sod, non-organic wastes and oil. Diseased plants and trees are also excluded from Plant Materials.

Process/Processing

"Process/Processing" means the Recycling, reuse, reformation, reconstituting, or otherwise manipulation of Solid Waste in preparation for its ultimate use or disposal.

Recyclable Materials

"Recyclable Materials" means discarded materials that are reused, remanufactured or processed.

Recycling

"Recycling" means the process of collecting, sorting, cleansing, treating and reconstituting discarded materials which meet the quality standards necessary to be reused, remanufactured or processed. The Collection, transportation or disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

Revenue Bonds

"Revenue Bonds" means revenue bonds to be issued by the Authority.

Service Area

"Service Area" means the collective territory within and, if applicable, outside the Member's boundaries with respect to which the Member exercises franchising authority for the Collection of Solid Waste, Recyclable Materials, and Plant Materials.

Solid Waste

"Solid Waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, as defined in California Public Resources Code §40191, as that section may be amended from time to time. For the purposes of this Agreement, "Solid Waste" does not include abandoned vehicles and parts thereof, Hazardous Waste or low-level radioactive waste, medical waste, Recyclable Materials, or Plant Materials.

Term

"Term" means the period of time specified in Article 4 of this Agreement.

Transport

"Transport" means the transportation of Solid Waste.

Treasurer

"Treasurer" means the Chief Financial Officer of Merced County Association of Governments ("MCAG").

EXHIBIT B

MEMBERS

County of Merced
City of Merced
City of Los Banos
City of Atwater
City of Livingston
City of Gustine
City of Dos Palos

CERTIFICATE OF SECRETARY

I, the undersigned, certify:

(1) That I am the duly elected and acting Secretary of the Merced County Regional Waste Management Authority, a California Joint Powers Authority; and

(2) That the foregoing Third Amended and Restated Joint Powers Agreement of the Merced County Regional Waste Management Authority, comprising 24 pages, constitutes the original Second Amended and Restated Joint Powers Agreement for Merced County Regional Waste Management Authority as duly adopted on July 18, 2013, and that said Third Amended and Restated Joint Powers Agreement have not been amended, modified or revoked.

DATED: July 24, 2013



Robin Lamas, Secretary

Flow Control

MCRWMA - Flow Control Assessment 2020

Jurisdiction:	RESIDENTIAL Collections						COMMERCIAL Collections					
	Garbage		Recycle		Green Waste		Garbage		Recycle		Green Waste	
	Garbage Service	Facility / Processor:	Blue Bin (RECY) Service:	Facility / Processor:	Green Bin (GW) Collection:	Facility / Processor:	Garbage Service	Facility / Processor:	Blue Bin (RECY) Service:	Facility / Processor:	Green Bin (GW) Collection:	Facility / Processor:
City of Atwater	YES	HWY59	N/A	N/A	YES	HWY59	YES	HWY59	YES	HWY59	N/A	N/A
City of Dos Palos	YES	BW	N/A	N/A	YES	BW	YES	BW	N/A	N/A	YES	BW
City of Gustine	YES	HWY59	N/A	N/A	NO	GILTON	YES	HWY59	N/A	N/A	NO	GILTON
City of Livingston	YES	HWY59	N/A	N/A	NO	GILTON	YES	HWY59	N/A	N/A	NO	GILTON
City of Los Banos	YES	BW	YES	BW	YES	BW	YES	BW	YES	BW	YES	BW
City of Merced	YES	HWY59	YES	HWY59	YES	HWY59	YES	HWY59	YES	HWY59	YES	HWY59
County of Merced - East	YES	HWY59	YES	HWY59	YES	HWY59	YES	HWY59	YES	HWY59	N/A	N/A
County of Merced - West	YES	BW	N/A	N/A	NO	GILTON	YES	BW	N/A	N/A	NO	GILTON

N/A = No service identified.

N/A = No service identified.



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor Villalta and City Council Members

FROM: Stacy Souza Elms, Community and Economic Development Director
Mason Hurley, Fire Chief
Gary Brizzee, Police Chief

DATE: August 19, 2020

TYPE OF REPORT: Agenda Item

SUBJECT: Los Banos Downtown Update

Recommendation:

That the City Council receive staff's report and presentation on an update of Downtown Los Banos and implementation of the Downtown Strategic Plan and provide direction to staff.

Background:

On July 1, 2020, the City Council requested staff to provide a Downtown update on the following items:

- Provide policies to require businesses to make changes as properties are sold to new ownership and require a timeline for completion; and
- Provide an update report on the status of 503/507 I Street and 543 I Street.

Staff responded that we would come back on the August 19th meeting with a status update on downtown buildings, a recommendation for new policies, and an implementation plan for the Downtown Strategic Plan, which was adopted by the City Council on February 5, 2020.

Existing Downtown Regulating Codes:

The Los Banos Municipal Code contains the following existing Codes, which are utilized to regulate downtown:

- Section 10-3.122: Boarded or Vacant Building; Time Period Maintenance.

No responsible party shall allow a building to stand vacant for more than sixty (60) days, unless one of the following applies:

(a) The building is the subject of an active building permit and the owner is progressing diligently to repair the premises for occupancy;

(b) The building meets all applicable codes in existence at either the time of its construction or at the time of its alteration or modification and is actively being offered for sale, lease, or rent;

(c) The building is being maintained in a safe and orderly manner and does not contribute to blight conditions;

(d) Maintenance in a safe and orderly manner shall include:

(1) Maintenance of any landscaping and plant materials in good condition,

(2) Maintenance of the exterior of the building, including but not limited to paint and finishes, in good condition,

(3) Regular removal of all exterior trash, debris and graffiti,

(4) Maintenance of the building in continuing compliance with all applicable codes and regulations.

- Section 10-3.123 Vacant Building Monitoring Fee.

(a) Fee imposed. There is hereby imposed upon every owner of a vacant building an annual vacant building monitoring fee in an amount to be set by resolution of the City Council. The fee shall not exceed the estimated reasonable cost of monitoring the vacant building. The fee shall be payable as to any building, residential or nonresidential, which:

(1) Is boarded up by voluntary action of the owner or as the result of enforcement activities by the City; or

(2) Is vacant for more than sixty (60) days for any reason.

(b) Fee waiver. The vacant building monitoring fee may be waived by the Building Official upon a showing by the owner that:

(1) The owner has obtained a building permit and is progressing diligently to repair the premises for occupancy; or

(2) The building meets all applicable codes and is actively being offered for sale, lease, or rent; or

(3) Imposition of the fee would impose a substantial economic hardship on the owner or would hinder the rehabilitation of the building.

(c) Procedure.

(1) The vacant building monitoring fee shall be billed to the owner of the property and mailed to the owner's address as set forth on the last equalized assessment roll of the County Assessor.

(2) Any owner billed may apply for a waiver on the grounds set forth in subsection (b) of this section by submitting a written statement of the grounds for the waiver, and the owner's daytime telephone number, to the Building Official within thirty (30) days after the billing is mailed to the owner. The Building Official shall review the written statement and may contact the owner to discuss the application for waiver. The Building Official shall prepare a written decision which shall be mailed to the owner.

(3) Any owner who disagrees with the decision of the Building Official may submit a written notice of appeal to the Building Official within fifteen (15) days of receipt of the decision. Failure to timely appeal the decision of the Building Official relating to a denial of a waiver constitutes a waiver of all rights to an administrative hearing and determination of the matter subject only to review pursuant to California Code of Civil Procedure Section 1094.5.

(4) If the fee is not paid within sixty (60) days after billing, or within sixty (60) days after the decision of the Building Official or after the decision upon appeal by the owner becomes final, the fee may be specially assessed against the property involved and made a personal obligation of the owner. If the fee is to be specially assessed against the property, a Hearing Officer, as designated by the City Manager, shall confirm the assessment and thereafter said assessment may be collected at the same time and in the same manner as ordinary real property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary real property taxes. All laws applicable to the levy, collection, and enforcement of real property taxes are applicable to the special assessment.

(5) The designated Hearing Officer may also cause a notice of lien to be recorded. The notice shall, at a minimum, identify the record owner or possessor of the property, set forth the last known address of the record owner or possessor, a description of the real property subject to the lien, and the amount of the fee.

This Ordinance was written over 13 years ago and staff recommends the City Council direct staff to review the existing Vacant Building Ordinance and develop options for Council's consideration to address issues related to vacant buildings.

Proposed Downtown Regulating Codes – Seismic Retrofitting:

With an aging building stock in the City's downtown district, in a seismically active region, Staff has recently begun to explore the need for local ordinances requiring seismic retrofits to certain categories of potentially vulnerable buildings, for example buildings with unreinforced masonry walls and/or soft story buildings. Without proper strengthening - retrofitting, these vulnerable buildings may be subjected to structural failure during and/or after an earthquake. Fire Chief, Mason Hurley has conducted preliminary research to identify retrofit programs appropriate for the City of Los Banos. Other cities have successfully implemented seismic retrofit programs which have been utilized to require voluntary and mandatory strengthening of building that exhibit structural deficiencies in their capacities to resist damage during an earthquake.

The main tool available to the City to reduce the risks associated with these structural vulnerabilities is to adopt an ordinance which mandates the strengthening of vulnerable buildings through seismic retrofitting.

City staff is has begun very preliminary research on the appropriate components and the cost of an effective retrofit program. Staff recommends the City Council direct staff to complete its research and report back to the City Council on a recommended approach to implementation of a seismic retrofit program specific to the City of Los Banos. In addition Staff will be looking into the costs associated with developing the program for the City Council's consideration.

Before recommending any such program, the City should consider several factors such as the cost of the retrofit, tenant displacement during the repairs, possible loss of parking spaces, time period for completion of the repairs, possible incentives or financial assistance, whether to exempt certain types of buildings, etc. Los Banos can benefit from studying what other local jurisdictions have implemented. Preliminary analysis of these issues will be reported to the City Council within the next 90-120 days. The project timeline from inception to an approved retrofit program could take up to 12 months.

Downtown Buildings Update:

- 503/507 I Street (Gardner Building) – has an approved building permit, but has had difficulties locating a specialized inspector for engineered buildings. The Police Department received a report regarding damaged windows and required the building to be secured. The property owner has advised that the window will be replaced with the retrofit of the building. Code Enforcement continues to work with the property owner to remediate violations.
- 543 I Street (Mixed-Use Building) – In 2019 this building had a fire occur in its maintenance room, which made the building unsafe to occupy. The property has since exchanged hands and the new property owner has been issued building permits to repair the electrical and electric panels. The property owner has stated to Code Enforcement that he intends to rehab the apartment units on the second floor first, and will then move on to repairing the commercial units on the first floor.

Downtown Bars:

The Taverns/Bars Downtown have been conditioned as a part of their business license renewals to comply with health and safety requirements to mitigate adverse affects on downtown. The conditions address cleanliness of premises, illumination, outdoor consumption of alcohol, interior/exterior security cameras, security at entrances, operations, loitering, loud amplification, reporting crime, and LBPD’s authority to shut down business for violation of conditions.

These conditions of approval have been implemented since the beginning of the year, but due to COVID-19, these establishments have been shutdown since March. There are two (2) establishments that have cycled through their business license renewals and there are (two) more that expire at the end of August. By the end of August, each Bar/Tavern on I Street will be regulated by Conditions of Approval.

Downtown Residential Units:

The newly updated Business License Ordinance requires a business license for rental or lease of multi-family residential of four or more units; however, the Ordinance was not created to regulate units. City staff is developing a residential inspection program that will work hand-in-hand with business licenses to implement inspections. Since the adoption of the Business License Ordinance, the law has been evolving in regards to residential inspections. Staff is developing a comprehensive process to regulate residential inspections to abate substandard housing in Los Banos.

Downtown Strategic Plan Implementation:

On February 5, 2020, the Los Banos City Council adopted the Downtown Strategic Plan prepared by PlaceWorks. The Strategic Plan consists of 10 strategies listed below:

- Plan for Land Use and Housing;
- Implement Gateways and Wayfinding;
- Strengthen Businesses;
- Rehabilitate Buildings;
- Upgrade Infrastructure;
- Improve Safety;
- Enhance Downtown Los Banos' Character;
- Develop a Food Scene;
- Manage Parking; and
- Enhance Public Spaces

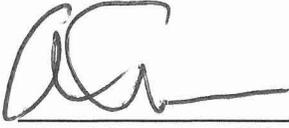
It should be noted that the Downtown Strategic Plan Strategies have not been included in the FY 20-21 Budget. Items marked with an asterisk (*) are Capital Improvements and would need to be incorporated in the City of Los Banos' Capital Improvement Plan (CIP). Items that qualify as Capital Improvements include infrastructure projects and equipment purchases. Items marked with (^) would require the hiring of a consultant to accomplish the project. As mentioned, these items would need to be built into the City's Financial Budget and would need to be planned for based on available funding and priorities. There is also opportunity to partner with organizations such as the Los Banos Downtown Association to implement these strategies.

The Implementation Matrix included in the Downtown Strategic Plan is included as Attachment 1 for your review. Based on comments received at the Planning Commission/City Council Study Session on September 25, 2019 and estimated costs, staff suggests prioritizing the Strategic Plan strategies in the following order:

1. Implement Gateways and Wayfinding*
2. Strengthen Businesses^
3. Rehabilitate Businesses^
4. Enhance Downtown Los Banos' Character^
5. Develop a Food Scene^
6. Plan for Land Use and Housing^
7. Improve Safety*^
8. Manage Parking*^
9. Upgrade Infrastructure*
10. Enhance Public Space*

Staff is seeking direction on the proposed prioritization of the Downtown Strategic Plan strategies. Once prioritization is established, staff can develop a work plan, incorporate the strategies into the City's Financial Budget, develop a timeline, and provide periodic progress reports to the City Council on accomplished projects.

Reviewed by:

A handwritten signature in black ink, appearing to be 'AT', written over a horizontal line.

Alex Terrazas, City Manager

Attachments:

1. Downtown Strategic Plan Implementation Matrix

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
		Note: highlighted rows below are priorities given by Los Banos Planning Commission/City Council in a Study Session on Sept 25, 2019.		\$: \$0–\$100,000 \$\$: \$100,000–\$1 million \$\$\$: 1 million–10 million \$\$\$\$: >\$10 million	Short-term: 0–2 yrs Medium-term: 3–5 yrs Long-term: >5 yrs
2.1 Plan for New Land Uses					
1. Housing and Lodging					
	a.	Promote Downtown Los Banos as a pedestrian, specialty retail, entertainment, cultural, office, and housing area.	Economic Development Advisory Commission, Los Banos Downtown Association, Potential PBID, Property Owners, Los Banos Chamber of Commerce, Developers, Community Based Organizations	\$	Short-term
	b.	Promote use of first floor space in new buildings downtown for retail, food service, and other high volume commercial/civic uses, and office, lodging, and residential uses on second floors.	Economic Development Advisory Commission, Los Banos Downtown Association, Potential PBID, Planning Commission, Property Owners, Los Banos Chamber of Commerce	\$	Short-term
	c.	Increase allowable densities in the Downtown to increase project feasibility and attract development and investment.	Planning Commission, Planning/Zoning Consultant	\$–\$\$	Short- to Medium-term
	d.	Consider adoption of a local density bonus that incentivizes affordable housing or other amenities for the Downtown by granting additional density above the State Density Bonus.	Planning Commission, Planning/Zoning Consultant	\$–\$\$	Short- to Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	e.	Conduct a development fee analysis and permitting audit to determine if the City’s various development fees and/or permit procedures are negatively impacting the feasibility of new Downtown development.	Planning Commission, Planning/Economics Consultant	\$–\$\$	Short- to Medium-term
	f.	Pursue mixed-use, mixed-income projects in Downtown Los Banos—especially projects that could act as catalysts for additional development and investment Downtown. To accomplish this, employ the following sub-strategies:	Planning Commission, Economic Development Advisory Commission, Property Owners, Los Banos Chamber of Commerce, Los Banos Downtown Association, Potential PBID, Planning/Zoning/Economics Consultant(s)	\$	Short- to Medium-term
		1. Seek State and federal affordable housing funds and tax credits to finance development.	Planning Commission, Economic Development Advisory Commission, CA Dept of housing and Community Development (HCD)	\$	Short- to Medium-term
		2. Enter into public/private partnerships with non-profit or for-profit developers.	Planning Commission, Economic Development Advisory Commission, Community Based Organizations, Non-profit Developers	Variable	Medium- to Long-term
		3. Partner with the Los Banos School District to build housing for teachers, or a mixed-income project with a set-aside for teacher housing.	Los Banos Unified School District (LBUSD), Planning Commission, Community Based Organizations, Non-profit Developers	\$\$\$–\$\$\$\$	Long-term
		4. Pursue State set-aside funding to build housing for farmworkers and their families.	Planning Commission, CA Dept of housing and Community Development (HCD), Farmers/Agribusiness	\$ (pursue) \$\$–\$\$\$ (implement)	Long-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	g.	Allow and promote the creation of live-work units Downtown for artists and craftspeople.	Planning Commission, Economic Development Advisory Commission, Downtown Los Banos Association, Los Banos Arts Council	\$	Short- to Medium-term
	h.	Revise or add provisions to the development code regarding Group Living Accommodations to allow and encourage cooperative housing for seniors.	Planning Commission, Non-profit Developers, Planning/Zoning Consultants, AARP, Los Banos Senior Center	\$	Short- to Medium-term
	i.	Amend Los Banos’s building code to allow for and/or encourage the construction of pre-fabricated multi-family housing.	Planning Commission, Planning/Architectural Consultants	\$	Short- to Medium-term
	j.	Provide targeted tax or fee reduction incentives to encourage development, potentially including geographically-targeted incentives for areas where development may be difficult.	Planning Commission, Economic Development Advisory Commission, Planning/Economics Consultant	Variable	Short- to Medium-term
	k.	Explore the possibility of allowing certain projects that include housing or types of housing by right.	Planning Commission, Planning/Zoning Consultant	\$–\$\$	Short- to Medium-term
	l.	Implement objective design and development standards to expedite staff review and discretionary approvals.	Planning Commission, Planning/Zoning Consultant	\$–\$\$	Short- to Medium-term
	m.	Allow for and encourage the development of one or more lodging uses in the Downtown, if economically feasible.	Planning Commission, Economic Development Advisory Commission, Los Banos Downtown Association, Property Owners, Los Banos Chamber of Commerce, Hotel Operators, Planning/Zoning Consultant	\$	Ongoing

Los Banos Downtown Strategic Plan

Category	Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
2. Office and Commercial				
a.	Identify opportunity sites within and immediately adjacent to the Downtown where Los Banos could work to attract a larger scale mixed-use office project.	Economic Development Advisory Commission, Los Banos Downtown Association, Potential PBID, Planning Commission, Property Owners, Los Banos Chamber of Commerce	\$	Ongoing
b.	For office projects proposed on larger opportunity sites within and immediately adjacent to the Downtown, encourage the incorporation of:	--		Short- to Medium-term
1.	Supportive services/retail, including pedestrian-oriented retail at key ground floor locations.	Planning Commission, Economic Development Advisory Commission, Property Owners, Los Banos Chamber of Commerce, Los Banos Downtown Association, Potential PBID, Planning/Zoning/Economics Consultant(s)	\$	Short- to Medium-term
2.	Minimum density standards to avoid allowing new projects which underutilize their sites; and creating a process for permitting exceptions when merited by economic and/or site conditions.	Planning Commission, Planning/Zoning/Economics Consultant	\$	Short- to Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	c.	Amend design guidelines and development standards to ensure that new office developments provide contemporary amenities that will be attractive to tenants. Examples include but are not limited to: green building features, high speed internet, abundant natural light, informal gathering spaces, etc.	Planning Commission, Planning/Zoning/Economics Consultant	\$--\$	Short- to Medium-term
	d.	Leverage construction of the new Courthouse and police station to encourage nearby commercial development to serve the needs of Courthouse workers and visitors.	Planning Commission, Economic Development Advisory Commission, Property Owners, Los Banos Chamber of Commerce, Los Banos Downtown Association, Potential PBID, Planning/Zoning/Economics Consultant(s)	\$	Short- to Medium-term
	e.	Explore opportunities for creating new office buildings shared by a mix of private-sector, public-sector, non-profit, and community-based organizations.	Planning Commission, Economic Development Advisory Commission, Property Owners, Los Banos Chamber of Commerce, Los Banos Downtown Association, Potential PBID, Planning/Zoning/Economics Consultant(s)	\$	Short- to Medium-term
	f.	Work with local business groups, property owners, and developers to approach major firms about the possibility of creating satellite offices in Los Banos.	Economic Development Advisory Commission, Property Owners, Los Banos Chamber of Commerce, Los Banos Downtown Association, Potential PBID, Planning/Zoning/Economics Consultant(s)	\$	Short- to Medium-term

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	g.	Grant conditional tax and/or development fee relief when it is necessary to ensure the feasibility of a proposed office/employment use.	Property Owners, Los Banos Chamber of Commerce, Planning Commission, Planning/Economics Consultant(s)	Variable	Short- to Medium-term
	h.	Encourage the development of a co-working space in Los Banos to provide office space and collaboration opportunities for freelancers and startups.	Economic Development Advisory Commission, Planning Commission, Property Owners, Los Banos Chamber of Commerce, Los Banos Downtown Association, Potential PBID, Planning/Zoning/Economics Consultant(s)	\$	Short- to Medium-term
3. Civic Public and Institutional Uses					
	a.	Pursue State and federal grants and other funding for the planning and construction of civic uses and infrastructure projects; investigate the possibility of using Community Development Block Grants to fund new civic uses and programs in the Downtown.	Economic Development Advisory Commission, Planning Commission, HCD, United States Department of Housing and Urban Development (HUD), Utilities Providers	\$	Short- to Medium-term
	b.	Propose public bond measures for new civic uses, potentially including a new library and/or expanded community/fitness center; convene a working group to identify unmet needs and priority projects.	Economic Development Advisory Commission, Planning Commission, Parks and Recreation Commission	\$\$\$-\$\$\$\$	Long-term
	c.	Evaluate the potential to place a dual-purpose performance space on the site of the Westside Union or Los Banos Elementary school.	Planning Commission, Parks and Recreation Commission, LBUSD	\$\$\$	Long-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	d.	Explore opportunities to create new public facilities and civic uses along the Rail Corridor and/or near the site of the new police station and courthouse.	Planning Commission, Parks and Recreation Commission, Los Banos Police Department (LBPD), Superior Court of California	\$\$\$–\$\$\$\$	Long-term
	e.	Investigate options for reusing the Crest Theater as a civic or community use.	Planning Commission, Parks and Recreation Commission, Los Banos Arts Council, Los Banos Downtown Association, Potential PBID, Property Owners, Los Banos Chamber of Commerce	\$ (investigate) \$\$\$ (implement)	Medium- to Long-term
	f.	Collaborate with Downtown business organizations and property owners to explore the possibility of creating a new children’s museum or activity center.	Planning Commission, Parks and Recreation Commission, Los Banos Arts Council, Los Banos Downtown Association, Potential PBID, Property Owners, Los Banos Chamber of Commerce	\$ (explore) \$\$\$ (implement)	Medium-term
	g.	Approach Sutter Health to investigate opening a community clinic or other health facility Downtown.	Planning Commission, Economic Development Advisory Commission, Sutter Health, Los Banos Downtown Association, Property Owners, Los Banos Chamber of Commerce, Potential PBID	\$ (explore) Variable (implement)	Long-term
	h.	Identify opportunity sites within and immediately adjacent to the Downtown where Los Banos could work to attract a large mixed-use project with an institutional anchor	Planning Commission, Economic Development Advisory Commission, Los Banos Downtown Association, Property Owners, Los Banos Chamber of Commerce, Potential PBID	\$	Short- to Medium-term

Category	Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
<p>4. Focus Areas - in the Downtown Strategic Plan, three areas are targeted for mixed-use infill development: the South side of H Street, focusing on 5th Street to 7th Street; I Street from 6th Street to 9th Street; and the Downtown Gateway Area on 6th Street from M Street to Pacheco Boulevard. For these Focus Areas implement the following:</p>				
a.	Incentivize development with zoning overlays that allow for increased density, by-right project approvals, or other incentives to encourage infill projects.	Planning Commission, Property Owners, Los Banos Chamber of Commerce, Economic Development Advisory Commission	\$--\$	Short- to Medium-term
b.	Prioritize historic structures in these areas or rehabilitation incentives and adaptive reuse efforts.	Planning Commission, California Office of Historic Preservation, California Main Street Program, Los Banos Milliken Museum, Merced County Historical Society, Native American Tribal Representatives	\$	Short- to Medium-term
c.	Evaluate opportunities for targeted fee reductions, public-private partnerships, or other direct incentives to encourage infill development in these areas.	Planning Commission, Economic Development Advisory Commission	\$\$ (evaluate) Variable (implement)	Short- to Medium-term
<p>2.2 Gateways and Wayfinding</p>				
a.	Embark on planning, community engagement, and design for two gateway signs and associated landscaping along SR 152 at 6th Street and I Street. Because Caltrans controls the right-of-way along SR 152, they should be consulted as part of this process.	Planning Commission, Traffic Safety Commission, California Department of Transportation (Caltrans), Planning/Transportation Consultants	\$\$--\$\$\$\$	Short- to Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	b.	Include these gateway signage goals and locations in the discussions of improvements to SR 152 in the ongoing SR 152 Specific Plan project, funded by Caltrans. This planning process is underway in 2019 and expected to be completed in 2020.	Planning Commission, Traffic Safety Commission, California Department of Transportation (Caltrans), Planning/Transportation Consultants	\$	Short- to Medium-term
	c.	Develop a Downtown Wayfinding program that will determine appropriate locations for wayfinding signage, designs for the signage boards or kiosks, and cost estimates for implementation.	Planning Commission, Economic Development Advisory Commission, Los Banos Downtown Association, Los Banos Chamber of Commerce, Potential PBID, Property Owners	\$\$ (develop) \$\$\$ (implement)	Short- to Medium-term
	d.	Seek funding to implement and maintain the signage installations once designs and costs are determined.	Planning Commission, Economic Development Advisory Commission, Los Banos Downtown Association, Los Banos Chamber of Commerce, Potential PBID, Property Owners	\$	Short- to Medium-term
2.3 Strengthen Businesses					
	a.	Partner with local business organizations such as the Chamber of Commerce, the Los Banos Downtown Association, and any business improvement districts in their efforts to support and attract Downtown businesses.	Chamber of Commerce, Los Banos Downtown Association, Economic Development Advisory Commission, Planning Commission	\$	Short- to Medium-term
	b.	Encourage formation of a Buy Local Los Banos organization, through which Los Banos businesses work together to encourage residents and visitors to buy local products and patronize local businesses.	Chamber of Commerce, Los Banos Downtown Association, Economic Development Advisory Commission, Planning Commission	\$	Short- to Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	c.	Work with business organizations to develop and market a Los Banos coupon book that focuses on a local, independent, and Downtown businesses.	Chamber of Commerce, Los Banos Downtown Association, Economic Development Advisory Commission, Planning Commission	\$--\$	Short- to Medium-term
	d.	Revise the City Website to include more detailed direction for starting a business and create an online application system for business licenses.	Planning Commission, Economic Development Advisory Commission, IT/Web Consultants, User Experience (UX) Designers, Chamber of Commerce	\$	Short-term
	e.	Create a Revolving Loan Fund to provide low-interest loans to assist small businesses who cannot find private financing, and establish a board, commission, or other review body to evaluate applications and administer the program.	Economic Development Advisory Commission, Chamber of Commerce, Economics/Financial Consultant	\$\$\$--\$\$\$\$	Medium- to Long-term
	f.	Increase/expand city-offered consultation services for small businesses and entrepreneurs.	Economic Development Advisory Commission, Chamber of Commerce, Economics/Financial Consultant	\$--\$	Short- to Medium-term
	g.	Collaborate with business organizations to engage in marketing campaigns both to potential downtown visitors and customers, and to larger business interests who may wish to invest in Downtown Los Banos.	Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association, Economics/Financial Consultant	\$	Short- to Medium-term
	h.	Develop programs for targeted tax or fee relief for small businesses.	Economic Development Advisory Commission, Planning Commission, Chamber of Commerce, Los Banos Downtown Association, Economics/Financial Consultant	Variable	Short- to Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	i.	Work with business organizations, property owners, and small business owners/founders to identify spaces for new and relocated business and reduce vacancies in the Downtown.	Economic Development Advisory Commission, Planning Commission, Property Owners, Small Business Owners, Chamber of Commerce, Los Banos Downtown Association, Economics/Financial Consultant	\$	Short-term
	j.	Collaborate on and/or help fund marketing efforts for the Downtown.	Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association, Small Business Owners, Graphic Designers/Marketing Consultants	\$	Short-term
	k.	Expand, promote, and leverage Downtown events, such as street fairs, farmers markets, etc. to attract new businesses, and to build public awareness and support for Downtown revitalization.	Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association, Small Business Owners, Graphic Designers/Marketing Consultants	\$--\$	Short- to Medium-term
	l.	Maintain and update the Downtown Los Banos website to promote events, build public awareness, and market downtown to consumers, businesses, and investors.	Los Banos Downtown Association, Chamber of Commerce, Los Banos Arts Council, Economic Development Advisory Commission	\$	Short-term
	m.	Conduct consumer surveys to determine what goods, services, and amenities residents most want and need in Downtown Los Banos.	Los Banos Downtown Association, Chamber of Commerce, Marketing Research Consultants, Economic Development Advisory Commission	\$--\$	Short- to Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	n.	Explore establishment of a small business of the month and/or year award to highlight local businesses and entrepreneurs.	Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association, Business Owners	\$	Short-term
	o.	Use social media to promote Downtown Los Banos businesses and events.	Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association, Business Owners	\$	Short-term
	p.	Work with Merced County to explore opportunities for holding more events at the County Fairgrounds and leverage existing events to bring additional foot traffic to Downtown Los Banos.	Merced County, Parks and Recreation Commission, Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association, Business Owners	\$	Short- to Medium-term
	q.	Establish new Downtown events such as open streets events, holiday gatherings, Food Truck Fridays, or others.	Los Banos Downtown Association, Business Owners, Parks and Recreation Commission, Chamber of Commerce, Economic Development Advisory Commission	\$\$	Short- to Medium-term
	r.	Evaluate the potential for adopting a system to manage the mix and number of downtown business types to ensure a diverse business mix in Downtown Los Banos.	Planning Commission, Los Banos Downtown Association, Chamber of Commerce, Business Owners, Property Owners	\$	Short-term

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	s.	Evaluate what land uses should be subject to discretionary approval to best achieve a vibrant and diverse business mix, and adopt changes to the Municipal Code to require conditional use permits for those uses.	Planning Commission, Los Banos Downtown Association, Chamber of Commerce, Business Owners, Property Owners	\$	Short-term
2.4 Rehabilitate Buildings					
	a.	Work with the State Office of Historic Preservation’s Local Government Assistance Program and California Main Street Program to craft economic incentives to preserve and rehabilitate historic structures.	California Office of Historic Preservation, California Main Street Program, Los Banos Milliken Museum, Merced County Historical Society, Native American Tribal Representatives, Planning Commission	\$\$	Medium-term
	b.	Adopt a Local Mills Act program to provide tax relief to property owners who rehabilitate historic structures.	Planning Commission, California Office of Historic Preservation, Merced County Historical Society	Variable	Medium-term
	c.	Collaborate with the State Historic Preservation Office to assist owners of historic properties in claiming the 20 percent federal income tax credit available for the rehabilitation of historic, income-producing buildings that are determined by the Secretary of the Interior, through the National Park Service, to be “certified historic structures.”	Planning Commission, California Office of Historic Preservation, California Main Street Program, Merced County Historical Society	\$	Medium-term
	d.	Institute local tax and/or fee relief to incentivize the preservation and rehabilitation of historic structures.	Planning Commission, California Office of Historic Preservation, California Mainstreet Program	Variable	Medium-term
	e.	Relax parking requirements for existing structures.	Planning Commission, Traffic Safety Commission	\$	Short- to Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	f.	Allow flexibility to divide existing structures to create separate front/rear spaces and access.	Planning Commission	\$	Short- to Medium-term
	g.	Establish and fund a local grant program to support the preservation and rehabilitation of historic structures.	Planning Commission, California Office of Historic Preservation, California Main Street Program, Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association	Variable	Medium- to Long-term
	h.	Enter into public/private partnerships for the preservation and restoration of historic structures.	Planning Commission, California Office of Historic Preservation, California Main Street Program, Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association	Variable	Medium- to Long-term
	i.	Pursue private and charitable funding to support building rehabilitation and façade improvement.	Planning Commission, California Office of Historic Preservation, California Main Street Program, Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association	\$	Short- to Medium-term
	j.	Adopt and implement a local landmarking program to help owners of historic properties access preservation incentives and funding.	Planning Commission, California Office of Historic Preservation, California Main Street Program, Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association	\$\$	Medium- to Long-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	k.	Establish a historic district in Downtown Los Banos to facilitate preservation efforts and improve access to State and federal rehabilitation incentives.	Planning Commission, California Office of Historic Preservation, California Main Street Program, Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association	\$\$	Medium- to Long-term
	l.	Incentivize and/or support adaptive reuse.	Planning Commission, California Office of Historic Preservation, California Main Street Program, Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association	\$--\$\$	Short- to Medium-term
	m.	Encourage project developers to pursue purchase of adjacent historic properties/structures and to integrate their rehabilitation in the overall project.	Planning Commission, Economic Development Advisory Commission, Property Owners, Chamber of Commerce, Los Banos Downtown Association	\$	Short-term
	n.	Allow new developments to preserve and restore historic facades while building new structures above and/or behind them.	Planning Commission, Planning/Zoning Consult, Historic Resources Consultant, Architects	\$	Short-term
	o.	Pursue grants and other financial assistance from foundations and organizations with a focus on historic preservation, potentially including but not limited to: the California Council for the Humanities, the Getty Conservation Institute, the National Trust for Historic Preservation, and the US Small Business Administration.	State Office of Historic Preservation, Planning Commission, California Main Street Program, California Council for the Humanities, the Getty Conservation Institute, the National Trust for Historic Preservation, and the US Small Business Administration.	\$	Short- to Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	p.	Partner with nonprofits to buy substandard buildings with residential units and leverage outside funds to rehabilitate them into safe, well-managed housing.	Planning Commission, Non-Profit Developers, Community Based Organizations	\$\$\$-\$\$\$\$	Medium- to Long-term
2.5 Upgrade Infrastructure					
	a.	Pursue State and Federal grants and other funding for infrastructure construction and planning.	Planning Commission, Economic Development Advisory Commission, HCD, Caltrans, HUD, US Economic Development Administration (EDA), US Public Works Development Facilities Program, Public Telecommunications Facilities Program, Federal Transit Administration (FTA), Utilities Providers	\$	Short- to Medium-term
	b.	Draft and adopt a Capital Improvements Plan to identify priority projects, funding sources, potential phasing and key stakeholders.	Planning Commission, Economic Development Advisory Commission, Chamber of Commerce, Property Owners, Community Based Organizations, Utilities Providers	\$-\$	Medium- to Long-term
	c.	Propose public bond measures for infrastructure/ streetscape projects, subsequent to or independent of development of a Capital Improvements Plan, potentially including repaving, improved water/ wastewater systems, fiber-optic and/or municipal internet, enhanced street lighting, support for building rehabilitation, and/or renewable energy systems.	Planning Commission, Economic Development Advisory Commission, Chamber of Commerce, League of Women Voters, Utilities Providers	\$\$\$\$	Long-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	d.	Closely follow State-level developments for potential funding sources and other opportunities, such as the revival of redevelopment agencies.	Planning Commission, Economic Development Advisory Commission	\$	Short-term
	e.	Review infrastructure-related development impact fees and set them at the upper feasible limit to fund infrastructure projects while continuing to encourage Downtown development.	Planning Commission, Economic Development Advisory Commission, Planning/Economics/Engineering Consultants	\$	Short-term
	f.	Require large development projects to include and/or fund infrastructure and streetscape improvements, as feasible. These upgrades could include, among other things: repaved sidewalks, pedestrian-scale lighting, undergrounding of utilities, and/or new street trees.	Planning Commission, Property Owners, Developers, Planning/Economics Consultants and Architects/Engineers	\$	Short- to Medium-term
	g.	Pursue street repaving that lowers centerline pavement heights to improve access for disabled persons and facilitate addition of sidewalk bulb-outs.	Traffic Safety Commission, Planning Commission	\$\$\$-\$\$\$\$	Medium- to Long-term
	h.	Encourage formation of a business improvement district that can help direct and fund streetscape and lighting improvements.	Los Banos Downtown Association, Chamber of Commerce, Economic Development Advisory Commission	\$	Short- to Medium-term

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
2.6 Improve Safety					
	a.	Improve street lighting in Downtown Los Banos, with a focus on pedestrian-scale lighting that improves sidewalk safety and adds visual appeal.	Los Banos Downtown Association, Potential PBID, Planning Commission, Traffic Safety Commission, Chamber of Commerce	\$\$-\$\$\$	Medium- to Long-term
	b.	Require new developments and major renovations to integrate pedestrian-scale lighting into building façades.	Planning Commission, Developers, Property Owners	\$	Short- to Medium-term
	c.	Implement Crime Prevention through Environmental Design (CPTED) concepts and approaches by amending Los Banos’s development and design standards or by adopting a set of CPTED standards as a supplement to the Community Design Standards. Consider implementation of policies including but not limited to:	Planning Commission, Developers, Property Owners	\$-\$	Short- to Medium-term
		1 Work to increase foot and bicycle traffic on streets in Downtown Los Banos	Planning Commission, Los Banos Downtown Association, Chamber of Commerce, Business Owners, Los Banos Arts Council (for events), Traffic Safety Commission	\$	Short- to Medium-term
		2 Require new developments to use lighting fixtures and brightness levels that prevent glare and the creation of shadowed areas where people can hide.	Planning Commission, Developers, Property Owners	\$	Short- to Medium-term
		3 Ensure new developments and major rehabilitations put “eyes on the street” by providing building transparency at ground level and preferably on upper stories as well.	Planning Commission, Developers, Property Owners	\$	Short- to Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	4	Avoid building massing that creates recessed areas or blind corners.	Planning Commission, Developers, Property Owners	\$	Short- to Medium-term
	5	Avoid building features which allow external access to upper windows or roofs.	Planning Commission, Developers, Property Owners	\$	Short- to Medium-term
	6	Discourage use of tall fences and promote fencing that allows visual permeability (e.g. picket fencing); but discourage chain-link fences or other types which create a sense of neglect or squalor.	Planning Commission, Developers, Property Owners	\$	Short- to Medium-term
	7	Increase regular public activities in the Downtown in the evenings and at night to change perceptions and put eyes on the street.	Parks and Recreation Commission, Los Banos Downtown Association, Chamber of Commerce, Business Owners, Los Banos Arts Council (for events)	\$-\$\$	Short- to Medium-term
	8	Install string lighting on trees or suspended lights over street to create a sense that Downtown is an active, safe, and enjoyable place to be at night.	Potential PBID, Los Banos Downtown Association, Planning Commission, Chamber of Commerce, Business Owners	\$-\$\$	Medium- to Long-term
d.		Regulate Los Banos’s nightlife more closely and work with business organizations and venue owners to reform practices to create a safer and more welcoming environment.	Planning Commission, Los Banos Police Department, Los Banos Downtown Association, Potential PBID, Chamber of Commerce, Business Owners	\$-\$\$	Short- to Medium-term
e.		Work with the Los Banos Police Department to institute Downtown foot and/or bicycle patrols.	Los Banos Police Department	\$\$\$	Medium-term
f.		Work with the Los Banos Police Department to establish and/or expand community-based policing initiatives.	Los Banos Police Department, Community Based Organizations	\$\$-\$\$\$	Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	g.	Seek County, State, federal, and charitable funding to create an emergency shelter, treatment center, and/or supportive housing so that individuals with substance use issues have an alternative to being on the streets.	HCD, HUD, Planning Commission, Potential PBID, Non-Profit Developers, Community Based Organizations	\$	Medium- to Long-term
	h.	Enforce the Los Banos and California building codes to ensure buildings are safe and maintained at a level that meets minimum habitability standards.	Planning Department, Los Banos Fire Department, Planning Commission	\$\$	Short- to Medium-term
	i.	Convene a panel or commission to address Los Banos's homelessness issues and recommend best practices.	Planning Commission, Community Based Organizations, HCD, Los Banos Downtown Association, Religious/Service Organizations	\$--\$\$	Short- to Medium-term
2.7 Enhance Downtown Los Banos's Character					
	a.	Cultivate high-quality landscaping that recalls Los Banos's origins as an agricultural and ranching center.	Planning Commission, Los Banos Tree Commission (Tree Commission) Los Banos Downtown Association, Potential PBID, Property Owners	\$\$--\$\$\$	Medium-term
	b.	Care for and maintain healthy and vigorous street trees that provide ample shade and are appropriate for Los Banos's climate.	Tree Commission, Property Owners, Los Banos Downtown Association, Potential PBID	\$\$--\$\$\$	Medium-term
	c.	Pursue grants and other funding sources to provide a landscaping and streetscaping program Downtown.	Tree Commission, Property Owners, Los Banos Downtown Association, Potential PBID	\$	Short- to Medium-term
	d.	Implement a unified retail signage program in the Downtown, potentially including requirements for all establishments have awnings over entrances, storefront windows, and awning-level blade signs to help pedestrians locate stores.	Planning Commission, Developers, Property Owners, Los Banos Downtown Association, Potential PBID, Chamber of Commerce	\$--\$\$	Medium-term

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	e.	Build upon the Façade Improvement Program to develop an enhanced set of Design Guidelines for all new construction and additions.	Planning Commission, Developers, Property Owners, Los Banos Downtown Association, Potential PBID, Chamber of Commerce	\$–\$\$	Short- to Medium-term
	f.	Require contemporary materials (e.g., plaster, hardboard) used for building rehabilitation are detailed to have a scale and feel similar to original historic elements.	Planning Commission, Property Owners, Developers, Contractors	\$	Short- to Medium-term
	g.	Work with property owners and developers to encourage building rehabilitations that expose and restore hidden materials and details in building facades.	Planning Commission, Property Owners, Developers, Contractors	\$	Short- to Medium-term
	h.	Explore opportunities to convert alleyways into pedestrian-oriented public spaces, potentially including dining areas, kiosks, or other amenities.	Planning Commission, Traffic Safety Commission, Los Banos Downtown Association, Potential PBID, Chamber of Commerce	\$ (explore) \$\$–\$\$\$ (implement)	Medium-term
2.8 Develop a Food Scene					
	a.	Offer tax credits, rebates, or other financial incentives to promote building rehabilitations and systems upgrades to meet the needs of full-service restaurants.	Economic Development Advisory Commission, Planning Commission, Chamber of Commerce, Los Banos Downtown Association, Potential PBID	\$\$\$–\$\$\$\$	Medium- to Long-term
	b.	Streamline permitting for opening restaurants and adjust permit categories and procedures to allow for restaurants that serve foods that do not require commercial kitchen features such as ventilation and industrial sinks.	Planning Commission, Economic Development Advisory Commission, Chamber of Commerce, Merced County Department of Public Health	\$–\$\$	Short- to Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	c.	Encourage and allow for food trucks in Downtown Los Banos (including through municipal code revisions) and explore creation of a designated space for a cluster of food trucks. Work to ensure the space includes amenities for patrons, such as restrooms, water fountains, seating, and protection from the elements.	Planning Commission, Economic Development Advisory Commission, Los Banos Downtown Association, Chamber of Commerce	\$ (allow/explore) \$\$-\$\$\$ (implement)	Short- to Long-term
	d.	Work to attract a biergarten or similar outdoor space for family-friendly drinking and eating options; work with owners to provide games and entertainment.	Economic Development Advisory Commission, Planning Commission, Chamber of Commerce, Los Banos Downtown Association, Potential PBID	\$	Medium- to Long-term
	e.	Assist local restaurants so they can expand their footprint or open additional locations in the Downtown.	Economic Development Advisory Commission, Planning Commission, Chamber of Commerce, Los Banos Downtown Association, Potential PBID	\$-\$\$	Short- to Medium-term
	f.	Contact popular restaurants in nearby communities to explore opportunities for them to establish a presence in Downtown Los Banos.	Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association, Potential PBID	\$	Short-term
	g.	Create multiple weekly farmers markets that serve different neighborhoods on different days. Consider creating a Saturday Downtown Farmers Market to draw additional visitors to the Downtown on weekends.	Chamber of Commerce, Merced County Farmers Market Promotion Program, Farmers Market Alliance, Economic Development Advisory Commission, Los Banos Downtown Association, Potential PBID, United States Department of Agriculture (USDA)	\$-\$\$	Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	h.	Work with local farmers market organizers to ensure that low-income residents are able to use EBT (food stamps) to purchase farmers market products.	Chamber of Commerce, Merced County Farmers Market Promotion Program, Farmers Market Alliance, Economic Development Advisory Commission, Los Banos Downtown Association, Potential PBID, United States Department of Agriculture (USDA)	\$	Short-term
	i.	Simplify permitting procedures to allow for sidewalk café seating in appropriate locations.	Planning Commission, Chamber of Commerce, Traffic Safety Commission, Los Banos Downtown Association, Potential PBID	\$	Short-term
	j.	Pursue creation of a market hall in Downtown Los Banos to feature a mixture of fresh, affordable, local, and gourmet foods.	Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association, Potential PBID	\$ (pursue) \$\$\$ (implement)	Medium- to Long-term
	k.	Work with existing local markets/grocers to expand their retail footprint and offerings in the Downtown.	Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association, Potential PBID	\$	Medium- to Long-term
	l.	Work with local restaurants, markets, cultural organizations and food growers to organize an annual food festival that celebrates San Joaquin Valley produce and cuisines from across local cultures.	Economic Development Advisory Commission, Chamber of Commerce, Los Banos Downtown Association, Potential PBID, Merced County Farmers Market Promotion Program, Farmers Market Alliance	\$–\$\$	Medium- to Long-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	m.	Pursue community gardening and edible schoolyard programs that offer schoolchildren and their families the opportunity to grow their own food and connect with Los Banos’s agricultural heritage.	LBUSD, Edible Schoolyard Project	\$\$	Medium- to Long-term
	n.	Encourage and/or incentivize new developments to incorporate rooftop agriculture as an amenity for residents, an energy efficiency/stormwater prevention measure, and as a showpiece for Los Banos.	Planning Commission, Developers, Property Owners, Chamber of Commerce	\$	Short- to Medium-term
	o.	Partner with existing or new community-based organizations whose goals is to teach culinary and restaurant skills to marginalized populations; work to find space for such organizations in the downtown.	Community Based Organizations, Los Banos Community Center, Parks and Recreation Commission	\$–\$\$	Medium-term
	p.	Work with downtown business groups and restaurants to create pub crawls, wine walks, and other similar food/drink tours of Downtown Los Banos.	Los Banos Downtown Association, Chamber of Commerce, Potential PBID, Economic Development Advisory Commission	\$	Short- to Medium-term
	q.	Pursue a local food scrap collection program to reduce waste, improve Los Banos’s sustainability image, and provide high quality compost for local community gardens and food growers.	Republic Services (Solid Waste and Recycling), CalRecycle, Chamber of Commerce, Planning Commission	\$\$\$–\$\$\$\$	Medium- to Long-term
	r.	Work to build or convert an existing space to host a family-friendly brewpub that offers a full menu and entertainment.	Los Banos Downtown Association, Economic Development Advisory Commission, Chamber of Commerce, Potential PBID	\$\$–\$\$\$	Medium-term

Category	Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
2.9 Manage Parking				
a.	Develop and install clear, visually appealing parking signage based on the best practices of other cities.	Planning Commission, Traffic Safety Commission, Los Banos Downtown Association, Potential PBID, Chamber of Commerce, Transportation/Parking Consultant	\$\$	Short- to Medium-term
b.	Conduct a parking supply study for Downtown Los Banos to identify geographical areas, times of day, and days of the week when parking is most abundant or scarce. This study would serve to inform Los Banos’s parking policies by identifying what parking restriction and pricing schemes would be most appropriate for different times and areas.	Planning Commission, Traffic Safety Commission, Los Banos Downtown Association, Potential PBID, Chamber of Commerce, Transportation/Parking Consultant	\$--\$	Short- to Medium-term
c.	Aim for an 85 percent parking occupancy rate at any given time; this usually equates to roughly one vacant space per block, which helps travelers find a space quickly while ensuring parking is not underutilized.	Planning Commission, Traffic Safety Commission, Los Banos Downtown Association, Potential PBID, Chamber of Commerce, Transportation/Parking Consultant	\$	Short- to Medium-term
d.	Adopt parking time limits for on-street spaces to ensure that street parking is available for visitors and customers. Encourage Downtown employees who need all-day parking to park in centrally-located lots instead.	Planning Commission, Traffic Safety Commission, Los Banos Downtown Association, Potential PBID, Chamber of Commerce, Transportation/Parking Consultant	\$--\$	Medium- to Long-term
e.	Implement paid on street parking subject to the findings of a parking study and/or based on the expertise of staff and local business owners.	Planning Commission, Traffic Safety Commission, Los Banos Downtown Association, Potential PBID, Chamber of Commerce, Transportation/Parking Consultant	\$--\$\$	Medium- to Long-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	f.	Consider inexpensive or free parking for the first hour or half hour, with increasing rates for longer periods, in order to encourage turnover and attract customers making quick trips.	Planning Commission, Traffic Safety Commission, Los Banos Downtown Association, Potential PBID, Chamber of Commerce, Transportation/Parking Consultant	\$	Medium- to Long-term
	g.	Pursue lower-cost options for potential implementation of paid parking, such as solar-powered ticket machines instead of individual parking meters.	Planning Commission, Traffic Safety Commission, Los Banos Downtown Association, Potential PBID, Chamber of Commerce, Transportation/Parking Consultant	\$\$	Medium- to Long-term
	h.	Evaluate the feasibility of building a parking structure in Downtown Los Banos:	Planning Commission, Traffic Safety Commission, Los Banos Downtown Association, Potential PBID, Chamber of Commerce, Transportation/Parking/Economic s Consultant	\$--\$\$ (evaluate) \$\$\$--\$\$\$\$ (build)	Short- to Medium-term
	1	Determine what conditions would fiscally justify the creation of a parking structure.		\$	Short- to Medium-term
	2	Explore options for building a shared parking structure as part of another project (e.g., a new office).		\$	Short- to Medium-term
	3	Consider how long-term changes in travel patterns or vehicle ownership may affect parking needs.		\$	Short- to Medium-term
	4	Investigate options for creating a parking structure designed for future conversion to non-parking uses.		\$	Short- to Medium-term
	5	Ensure that any new parking structure includes pedestrian-oriented street frontage.		\$	Medium- to Long-term
	6	Set phased goals for the City to remove surface parking lots and/or replace them with structured parking over time to allow for conversion to other uses.		\$	Long-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	i.	Identify blocks where angled parking could be converted to parallel parking to allow wider sidewalks and/or new parklets; and, if needed, consider what blocks could be converted from parallel to diagonal parking to avoid a net loss of parking spaces.	Planning Commission, Traffic Safety Commission, Los Banos Downtown Association, Potential PBID, Chamber of Commerce, Transportation/Parking/Economics Consultant	\$	Short- to Medium-term
	j.	Explore the need for and potential to convert portions of the old Police station site to public parking to accommodate parking needs if studies show additional parking is needed, or to reuse other parking lots for new uses if the additional parking is not needed.	Los Banos Police Department, Planning Commission, Traffic Safety Commission, Los Banos Downtown Association, Potential PBID, Chamber of Commerce, Transportation/Parking/Economics Consultant	\$ (explore) \$\$ (implement)	Short- to Medium-term
	k.	Work with Downtown business organizations to evaluate the feasibility of creating a Downtown “Shopper Shuttle” that would enable residents to reach the Downtown without driving and parking.	Traffic Safety Commission, Los Banos Downtown Association, Chamber of Commerce, Potential PBID	\$ (evaluate) \$\$–\$\$\$ (implement)	Medium- to Long-term
	l.	Consider options for redeveloping the parking lot adjacent to City Hall for the purpose of a new civic use or a shared public-private mixed-use project.	Planning Commission, Traffic Safety Commission, Los Banos Downtown Association, Potential PBID, Chamber of Commerce, Transportation/Parking/Economics Consultant	\$ (evaluate) \$\$–\$\$\$ (implement)	Medium- to Long-term
	m.	Install additional on-street bicycle parking and require large-scale new developments to incorporate bicycle parking for residents, employees, and customers.	Planning Commission, Traffic Safety Commission, Developers, Property Owners, Los Banos Downtown Association, Potential PBID, Chamber of Commerce	\$\$	Short- to Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
2.10 Enhance Public Spaces					
a.		Maintain Catholic Park’s current features and enhance the park with signage, activity, and amenities.	Parks and Recreation Commission, Planning Commission, Los Banos Arts Council	\$–\$\$	Short- to Medium-term
	1.	Engage community members to find out what additional amenities may be needed at Catholic Park (e.g., park lighting, a well-designed sign marking the park, fencing around the play area, seating for parents, sidewalks along L Street, a water fountain, and/or new crosswalks).	Parks and Recreation Commission, Planning Commission, Los Banos Arts Council	\$	Short-term
	2.	Ensure that Catholic Park is noted on any wayfinding signage installed in Downtown.	Planning Commission, Los Banos Downtown Association, Potential PBID	\$	Short- to Medium-term
	3.	Explore the potential for the City to purchase the undeveloped parcel immediately to the south in order to expand Catholic Park and connect it to M Street. As part of this effort, also consider the potential to close this block of L street to car/truck traffic and integrate it into the park as a bicycle/pedestrian pathway.	Planning Commission, Parks and Recreation Commission, Property Owners	\$\$–\$\$\$	Long-term
	4.	Seek state, regional, or federal parks and recreation funding to implement improvements.	Planning Commission, Parks and Recreation Commission, HUD, HCD	\$	Short-term
b.		Improve and activate the existing public gathering space at 6th and K Streets through new character-defining features and efforts to ensure the space and its surroundings are safe, welcoming, and engaging:	LBUSD, Parks and Recreation Commission, Planning Commission, Los Banos Downtown Association, Potential	\$–\$\$\$	Medium- to Long-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	1.	Name the space and install signage to foster a more formalized and memorable sense of identity.	PBID, Chamber of Commerce, Los Banos Arts Council	\$	Short-term
	2.	Improve lighting in and around the space to make it feel more festive and safer at night. (Options could include new and brighter streetlamps or lights strung around and/or between trees.)		\$-\$	Medium-term
	3.	Increase the use of this public gathering space through new initiatives and activities, potentially including: after-school activities; bake sales or other school fundraisers; music and performances; creation of chalk or street art; or programming coordinated with Downtown events such as the Fall and Spring Faires.		\$	Short- to Medium-term
	4.	Coordinate with the Los Banos Unified School District so that if and when the portable classrooms adjoining this space are replaced, the District explores options for enhancing the space with new buildings/entrances.		\$\$	Long-term
	5.	Partner with business and property owners to improve properties on all four corners of this important intersection. Potential efforts include:		\$\$	Long-term
	•	Expanding the mural on the Farmer’s Insurance Building at the northeast corner of the intersection and providing nighttime illumination.		\$	Short- to Medium-term
	•	Adding more attractive landscaping and street trees to the sidewalk surrounding the Chase Bank.		\$\$	Medium- to Long-term
	•	Promoting future redevelopment of the Chase Bank site with a new, mixed-use gateway project.		\$	Medium- to Long-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
		<ul style="list-style-type: none"> Improve landscaping on the corner occupied by the Santa Fe Market and consider adding a new sign board under store sign featuring the messages “Welcome to Downtown Los Banos” and “Bienvenidos al Centro de Los Banos.” 		\$–\$\$	Medium- to Long-term
		<ul style="list-style-type: none"> Exploring long-term reconstruction of the Santa Fe Market to incorporate mixed uses and a pedestrian orientation that moves the market entrance up to the sidewalk and provides a sidewalk café and seating. 		\$	Long-term
	6.	Improve the appearance of the 6th and K Street intersection and visually announce the beginning of commercial Downtown Los Banos by creating eye-catching crosswalks and potentially a design or logo in the center of the intersection.	Traffic Safety Commission, Planning Commission, Potential PBID, Los Banos Downtown Association, Los Banos Arts Council	\$\$–\$\$\$	Medium- to Long-term
	c.	Activate Henry Miller Plaza and encourage more visitors through a variety of potential efforts, including:	Planning Commission, Parks and Recreation Commission, Los Banos Downtown Association, Chamber of Commerce, Los Banos Arts Council	\$\$–\$\$\$	Short- to Long-term
	1.	Promoting development of new buildings and land uses surrounding Henry Miller Plaza, as envisioned by the Rail Trail Corridor Regulating Code.		\$	Long-term
	2.	Developing temporary, shaded public parking lots on either side of Henry Miller Plaza.		\$\$	Medium-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	3.	Upgrading recently-added stop signs to a traffic signal at 6th and H street, along with high-visibility crosswalks to calm the speed of traffic, make it safer for pedestrians to cross H street, and make it easier for visitors and employees of the Community Center, as well as the new Courthouse and Police station to walk or bicycle Downtown.		\$\$	Short- to Medium-term
	4.	Ensuring that Henry Miller Plaza is prominently featured in any wayfinding signage program.		\$	Short- to Medium-term
	d.	Partner with Merced County to improve “Pacheco Park” (Merced County, Los Banos Park), enhance its role as a near-Downtown recreational amenity, and include new signage directing park-goers to explore Downtown.	Merced County Parks and Recreation Department, Parks and Recreation Commission, Planning Commission	-\$\$\$\$	Long-term
	e.	Ensure Rail Corridor development or other larger scale development such as office and employment centers near Downtown includes attractive and well-maintained public spaces. Consider incorporating privately owned public open spaces (POPOS) to create new informal public gathering places and integrate new uses with the broader community.	Planning Commission, Parks and Recreation Commission, Property Owners, Developers, Los Banos Downtown Association, Potential PBID	\$	Medium- to Long-term
	f.	Create new public spaces in Downtown, potentially including the following opportunities:	Planning Commission, Parks and Recreation Commission, Property	\$\$\$-\$\$\$\$	Medium- to Long-term

Los Banos Downtown Strategic Plan

Category		Policy, Program or Implementation Item	Potential Partners	Estimated Cost Level	Timing
	1.	Consider reusing part of the soon-to-be vacated Police Building complex at 5th and J Street as a small gathering space. Depending whether the old police building is demolished, as has been discussed, the site is large enough to accommodate a public gathering space as well as a new public parking lot.	Owners, Developers, Los Banos Downtown Association, Potential PBID	\$ (evaluate) \$\$\$ (implement)	Long-term
	2.	Consider repurposing one or two parking spaces along 6th Street to create one or more parklets.		\$\$	Medium-term
	3.	Consider long-term opportunities to convert public surface parking into parks or plazas, and explore short-term opportunities pilot such conversions on a temporary basis.		\$--\$\$ (evaluate) \$\$\$--\$\$\$\$ (implement)	Long-term



City of
Los Banos
At the Crossroads of California

Agenda Staff Report

TO: Mayor Villalta and City Council Members
FROM: Alex Terrazas, City Manager
DATE: August 19, 2020
TYPE OF REPORT: Regular
SUBJECT: Continuation of Existence of Local Emergency COVID - 19

RECOMMENDATION

1. Adopt Resolution No. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS
CONTINUING THE DECLARATION OF THE EXISTENCE OF A LOCAL
EMERGENCY WITHIN THE CITY OF LOS BANOS (COVID-19)**

BACKGROUND

The Coronavirus Disease 2019 (COVID-19), a severe acute respiratory illness caused by a novel (new) coronavirus was first detected in Wuhan, Hubei Province, People's Republic of China and the first case was reported on December 31, 2019, in China. Cases of COVID-19 are now being reported internationally outside of China including the United States.

Coronaviruses are a large group of viruses that are common among animals and humans. This novel coronavirus that causes COVID-19 is a newly discovered coronavirus that has not been previously detected in animals or humans. The source of this virus is not yet known.

Symptoms of the virus include fever, cough, and shortness of breath, and infected individuals have experienced a range of outcomes, from mild sickness to severe illness and death.

There is currently no vaccine to prevent COVID-19. The best way to prevent illness is to avoid being exposed to this virus. The virus is thought to spread mainly from person-to-person between people who are in close contact with one another (within about 6 feet). This occurs through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Older adults and people who have severe underlying chronic medical conditions like heart or lung disease or diabetes seem to be at higher risk for developing more serious complications from COVID-19 illness.

Chronology of events:

- On March 17, 2020 the City Manager as the City's Director of Emergency Services declared a local emergency.
- On March 18, 2020 the City Council adopted Resolution No. 6190 ratifying and confirming the declaration of a local emergency by the City Manager as the Director of Emergency Services.
- On April 15, 2020 the City Council adopted Resolution No. 6203 which extended the proclamation of the existence of a local emergency by the City's Director of Emergency Services and ratified and confirmed all actions taken by and orders of the City Manager or designee as the City's Director of Emergency Services, including Executive Order 2020-01 (face coverings for covered businesses) and Executive Order 2020-02 (public meeting times from 7:00p.m. to 4:00 p.m.).
- On June 3, 2020 the City Council adopted Resolution No. 6222 which extended the proclamation of the existence of a local emergency by the City's Director of Emergency Services and ratified and confirmed all actions taken by and orders of the City Manager or designee as the City's Director of Emergency Services including Executive Order 2020-01 and Executive Order 2020-02.
- On June 12, 2020 Merced County revised its Stay-at-Home Order into the Stay Safe Order.
- On June 17, 2020 the City Council rescinded Executive Order 2020-01 and by motion ordered the wearing of face coverings in the city council chambers and all other city buildings open to the public.

- On June 18, 2020 Governor Gavin Newsom announced a statewide mandate for face coverings for all individuals while in public.
- On July 15, 2020 the City Council adopted Resolution No. 6242 which extended the proclamation of the existence of a local emergency by the City's Director of Emergency Services and ratified and confirmed all actions taken by and orders of the City Manager or designee as the City's Director of Emergency Services.
- On August 5, 2020 the City Council reviewed Executive Order 2020-03 and Amendment No. 1 to Executive Order 2020-02 and received and considered comments and ratified, Executive Order 2020-03 and Amendment No. 1 to Executive Order 2020-02.
- As of August 11, 2020 there were 6,102 confirmed cases (2,339 probable active) of COVID-19 (novel coronavirus) and 74 deaths in Merced County; and 624 confirmed cases in the City of Los Banos; and 574,063 confirmed cases state wide and 10,471 deaths state-wide. The numbers of confirmed cases continue to increase in Merced County and surrounding counties and the State of California.
- Currently, the County of Merced remains under Stay Safe Order issued on June 12, 2020. The reasons for declaring the local emergency still exist.

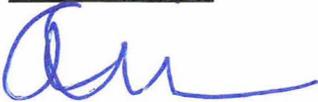
DISCUSSION

Staff is recommending that the City Council continue the Proclamation of the City Manager declaring the existence a local emergency pursuant to California Government Code Section 8630, in order to ensure appropriate resources and funding are available to the City in its response to the growing concern of COVID-19. Section 8630 requires that the City Council confirm the continuing existence of the local emergency every sixty (60) days. This recommendation is based on the data that the number of confirmed cases in Merced County and surrounding counties and the state of California continue to increase. The proposed resolution reaffirms the local emergency.

FISCAL IMPACT

There is no fiscal impact associated with this specific item. However, declaring a state of emergency may allow state/federal reimbursements as described above.

Reviewed by:



Alex Terrazas, City Manager

Attachments:
Proposed Resolution

RESOLUTION NO. ____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS
CONTINUING THE DECLARATION OF THE EXISTENCE OF A LOCAL
EMERGENCY WITHIN THE CITY OF LOS BANOS (COVID-19)**

WHEREAS, California Government Code Section 8630 provides that a local emergency may be proclaimed by the governing body of a city; and

WHEREAS, on March 17, 2020, the City Manager as the City's Director of Emergency Services declared a local emergency, finding that that conditions of extreme peril to the safety of persons and property have arisen within the City of Los Banos and that these conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the City of Los Banos; and,

WHEREAS, on March 18, 2020, the City Council of the City of Los Banos adopted Resolution No. 6190 ratifying and confirming the aforementioned declaration of a local emergency by the City Manager as the Director of Emergency Services; and

WHEREAS, on April 15, 2020, the City Council of the City of Los Banos adopted Resolution No. 6203 ratifying and confirming the aforementioned declaration of a local emergency by the City Manager as the Director of Emergency Services; and

WHEREAS, on June 3, 2020, the City Council of the City of Los Banos adopted Resolution No. 6222 ratifying and confirming the aforementioned declaration of a local emergency by the City Manager as the Director of Emergency Services; and

WHEREAS, on July 15, 2020, the City Council of the City of Los Banos adopted Resolution No. 6242 ratifying and confirming the aforementioned declaration of a local emergency by the City Manager as the Director of Emergency Services; and

WHEREAS, at the regular City Council meeting of August 5, 2020 the City Council reviewed Executive Order 2020-03 and Amendment No. 1 to Executive Order 2020-02 and received and considered comments on the same from interested stakeholders; and

WHEREAS, as a consequence of such review the City Council ratified, Executive Order 2020-03 and Amendment No. 1 to Executive Order 2020-02.

WHEREAS, Government Code Section 8630 requires that the City Council to review the need for continuing the local emergency at least every sixty (60) days; and

WHEREAS, the COVID -19 pandemic and associated emergency conditions are of an ongoing nature warranting the need to continue the declaration of the existence of a local emergency within the City of Los Banos.

NOW, THEREFORE, the City Council of the City of Los Banos, does hereby resolve as follows:

- 1 All of the above recitals are true and correct; and
2. The conditions of extreme peril to the safety of persons and property continue to exist within the City of Los Banos, caused by the effects of COVID-19; and
3. The aforementioned conditions of extreme peril warrant and necessitate the continuance of the proclamation of the existence of a local emergency by the City's Director of Emergency Services as ratified and confirmed by the City Council on March 18, 2020; and.
4. The City Council has reviewed the need for continuing the declaration of local emergency and finds based upon substantial evidence that the public interest and necessity require the continuance of the proclamation and declaration of local emergency; and
5. The City Council does hereby proclaim and declare an extension and continuation of the proclamation of the existence of a local emergency by the City's Director of Emergency Services as ratified and confirmed by the City Council on March 18, 2020 in accordance with California Government Code Section 8630; and
6. It is hereby further resolved, proclaimed and ordered that all actions taken by and orders of the City Manager or designee as the City's Director of Emergency Services and the Fire Chief who is delegated the authority under the Los Banos Municipal Code, in response to the local emergency as authorized by State law, by local ordinances, and resolutions and by the City of Los Banos Emergency Operations Plan are hereby ratified and confirmed; and
7. It is hereby further resolved, proclaimed and ordered that this local emergency shall be deemed to continue to exist until its termination is declared by the City Council of the City of Los Banos.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on the 19th day of August 2020, by Council Member _____ who moved for its adoption, which motion was duly seconded by Council Member _____, and the Resolution was adopted by the following vote:

AYES:
NOES:
ABSENT:

APPROVED:

Michael Villalta, Mayor

ATTEST:

Lucille L. Mallonee, City Clerk



City of
Los Banos
At the Crossroads of California

COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

Date: August 14, 2020

Re: Notice of Public Hearing

Proposal: Revisions to Vesting Tentative Tract Map #2020-02 & Final Development Plan #2020-01- Mission Village South Phase 5B

NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Los Banos Planning Commission to consider the revisions to Vesting Tentative Tract Map #2020-02 for Mission Village South Phase 5B and revisions to Final Development Plan #2020-01 for Mission Village South Phases 5A and 5B. The project site is located east of Mercey Springs Road, south of Mission Drive and north of Willmott Avenue; more specifically identified as Assessor's Parcel Numbers: 428-280-012.

A PUBLIC HEARING on this matter will be held at the next scheduled meeting of the Planning Commission on Wednesday, August 26, 2020 at 5:30 p.m. in the Council Chambers of Los Banos City Hall located at 520 "J" Street. Questions regarding the above-referenced item may be directed to Rudy Luquin, Associate Planner at City Hall or at (209) 827-2432.

All persons are invited to be present at the public hearing. Written and oral testimony is invited. Notice is hereby further given that if you challenge the above described Project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this Notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

Additional information may be obtained from the Community & Economic Development Department at 520 J Street, Los Banos, California. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (209) 827-7000. Notification at least 72 hours prior to the public hearing will enable the City to make reasonable arrangements to allow participation at this hearing

THE CITY OF LOS BANOS

Rudy Luquin
Associate Planner



City of
Los Banos
At the Crossroads of California

COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

Date: August 14, 2020

Re: Notice of Public Hearing

Proposal: Vesting Tentative Tract Map #2020-01

NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Los Banos Planning Commission to consider Vesting Tentative Tract Map #2020-01 for Overland Subdivision. The proposed project consists of the subdivision of approximately 1.9 acres into nine (9) Low Density Residential lots. The project site is located approximately 500 feet west of Cottonwood Drive, north of Overland Avenue and approximately 890 feet east of Cabernet Street; more specifically identified as Assessor's Parcel Numbers: 082-050-005.

A PUBLIC HEARING on this matter will be held at the next scheduled meeting of the Planning Commission on Wednesday, August 26, 2020 at 5:30 p.m. in the Council Chambers of Los Banos City Hall located at 520 "J" Street. Questions regarding the above-referenced item may be directed to Rudy Luquin, Associate Planner at City Hall or at (209) 827-2432.

All persons are invited to be present at the public hearing. Written and oral testimony is invited. Notice is hereby further given that if you challenge the above described Project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this Notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

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THE CITY OF LOS BANOS

Rudy Luquin
Associate Planner