

AGREEMENT  
BETWEEN THE  
CITY OF TRACY  
AND  
TRACY MATERIAL RECOVERY & SOLID WASTE  
TRANSFER, INC.  
FOR  
MATERIAL ACCEPTANCE, PROCESSING AND  
TRANSFER SERVICES

\* \* \* \*

DATED: DECEMBER 21, 2016

*This page intentionally left blank*

AGREEMENT  
 BETWEEN THE  
 CITY OF TRACY  
 AND  
 TRACY MATERIAL RECOVERY & SOLID WASTE TRANSFER, INC.  
 FOR  
 MATERIAL ACCEPTANCE, PROCESSING AND  
 TRANSFER SERVICES

---

## TABLE OF CONTENTS

<b>RECITALS</b>		<b>1</b>
<b>ARTICLE 1 DEFINITIONS</b>		<b>2</b>
1.1.	AB 341	2
1.2.	AB 939	2
1.3.	Agreement	2
1.4.	Applicable Law	2
1.5.	Approved Disposal Site(s)	4
1.6.	Approved Organics Processing Site(s)	4
1.7.	Approved Recyclables Processing Site(s)	4
1.8.	Average Recyclable Per Ton Revenue	4
1.9.	Baseline MMW Tonnage	4
1.10.	Baseline Recyclable Per Ton Revenue	4
1.11.	Change in Law	4
1.12.	Change of Control	5
1.13.	City	6
1.14.	City Curbside Program Recyclables	6
1.15.	City Curbside Program Recyclables (CCPR) Diversion Standard	6
1.16.	City Hauler	6
1.17.	Collection Agreement	6
1.18.	Collection Franchisee	6
1.19.	Commencement Date	6
1.20.	Construction and Demolition Debris	6
1.21.	Contract Year	7
1.22.	Contractor	7
1.23.	Contractor's Obligations	7
1.24.	County Agreement	7
1.25.	Covered Material	7
1.26.	CPI-U	7
1.27.	Customer	7
1.28.	Disposal, Dispose	8
1.29.	Diversion Standards	8
1.30.	Divert, Diversion	8
1.31.	E-Waste	8
1.32.	Facility	8
1.33.	Facility Diversion Standard	8



1.34	Facility Holiday(s).....	8
1.35	Federally Approved Holiday(s).....	8
1.36	Food Scraps.....	9
1.37	Gate Rates.....	9
1.38	Gross Rate Revenues.....	9
1.39	Hazardous Waste.....	9
1.40	Household Hazardous Waste.....	10
1.41	Maximum Incentive Tonnage.....	10
1.42	Mixed Municipal Waste.....	10
1.43	Non-Resident Self-Haulers.....	10
1.44	Notice.....	10
1.45	Organic Materials.....	10
1.46	Other Franchised Users.....	10
1.47	Other Users.....	10
1.48	Party(ies).....	11
1.49	Per Item Rates.....	11
1.50	Permit(s).....	11
1.51	Person.....	11
1.52	Process/Processing.....	11
1.53	Reasonable Business Efforts.....	11
1.54	Recovered Materials.....	11
1.55	Recovery.....	11
1.56	Recyclable Household Hazardous Waste.....	12
1.57	Recyclable Materials.....	12
1.58	Recyclable Material Incentive Fee.....	12
1.59	Resident Self-Haulers.....	12
1.60	Residue.....	12
1.61	State.....	12
1.62	Subcontractor(s).....	12
1.63	Ton or Tonnage.....	12
1.64	Tonnage Incentive Fee.....	13
1.65	Uncontrollable Circumstance(s).....	13
1.66	Unpermitted Waste.....	13
1.67	Yard Trimmings.....	14
<b>ARTICLE 2 TERMS OF AGREEMENT .....</b>		<b>14</b>
2.1	Term of Agreement.....	14
2.2	Option to Extend Term.....	15
2.3	Survival of Certain Provisions.....	15
2.4	Representations and Warranties of Contractor.....	15
2.5	Conditions to Effectiveness of Agreement.....	16
<b>ARTICLE 3 FEES AND PAYMENTS DUE TO CITY .....</b>		<b>17</b>
3.1	General.....	17
3.2	Tonnage Incentive Fee.....	17
3.3	Recyclable Material Revenue Sharing.....	18



<b>ARTICLE 4 GENERAL FACILITY OPERATIONS.....</b>	<b>18</b>
4.1    General .....	18
4.2    Receiving and Operating Hours .....	19
4.3    Weighing .....	19
4.4    Contractor Commitment to Deliver and Accept Covered Materials .....	20
4.5    Right to Enter and Inspect Facility .....	21
4.6    Diversion Standards .....	22
4.7    Facility Ownership and Contractor Operating Responsibilities .....	24
4.8    General Emergency Conditions and Response Plan .....	25
4.9    Nuisances .....	25
4.10   Contractor Management .....	25
4.11   Customer and Visitor Education .....	25
4.12   Waste Generation/Characterization Studies .....	26
4.13   Equipment and Vehicles .....	26
4.14   Services and Performance Review .....	27
4.15   City Right of Purchase .....	27
4.16   City and Contractor's Right to Request Changes .....	28
4.17   Compost Giveaway Program .....	30
<b>ARTICLE 5 TRANSFER STATION.....</b>	<b>30</b>
5.1    General .....	30
5.2    Transfer Station Receiving Hours .....	30
5.3    Acceptance of Covered Material .....	30
5.4    Customer Comments .....	32
5.5    Vehicle Turnaround .....	32
5.6    Transfer of Covered Material and Residue .....	32
<b>ARTICLE 6 MRF OPERATIONS .....</b>	<b>32</b>
6.1    Acceptance of Recovered Materials.....	32
6.2    Approved Recyclables Processing Site(s) .....	33
6.3    Processing and Marketing of Recovered Materials .....	33
6.4    Disposal of Recyclable and Organic Materials Prohibited .....	33
<b>ARTICLE 7 MARKETING .....</b>	<b>33</b>
7.1    Marketing Obligations .....	33
<b>ARTICLE 8 DISPOSAL AND ORGANICS PROCESSING.....</b>	<b>34</b>
8.1    Disposal of Mixed Municipal Waste and Residue.....	34
8.2    Processing of Organic Materials .....	35
<b>ARTICLE 9 PERSONNEL .....</b>	<b>36</b>
9.1    Personnel Requirements.....	36
9.2    Subcontractors .....	36
9.3    Fees and Gratuities.....	37
9.4    Non-Discrimination .....	37



<b>ARTICLE 10 BILLING AND CUSTOMER SERVICE.....</b>	<b>37</b>
10.1 Customer Billing .....	37
10.2 Customer Service and Contractor Availability .....	37
<b>ARTICLE 11 CONTRACTOR COMPENSATION AND GATE RATES .....</b>	<b>38</b>
11.1 General .....	38
11.2 Gate Rates for Contract Year One .....	39
11.3 Annual Gate Rate Adjustment Method and Schedule of Adjustments ...	39
11.4 Per Item Rate Adjustments .....	39
11.5 Extraordinary Adjustments .....	39
11.6 City Users are Most Favored Customers .....	43
11.7 City Payment to Contractor .....	44
<b>ARTICLE 12 RECORDS, REPORTS &amp; INFORMATION REQUIREMENTS .....</b>	<b>45</b>
12.1 General .....	45
12.2 Record Keeping Requirements .....	45
12.3 Reporting Requirements .....	47
12.4 Review of Tonnage and Payment of Fees .....	48
12.5 Reporting Adverse Information.....	49
12.6 Failure to Report .....	49
<b>ARTICLE 13 INDEMNIFICATION AND INSURANCE.....</b>	<b>49</b>
13.1 Indemnification .....	49
13.2 Consequential Fines .....	51
13.3 Insurance .....	51
<b>ARTICLE 14 DEFAULT, REMEDIES AND LIQUIDATED DAMAGES.....</b>	<b>55</b>
14.1 Events of Default by Contractor .....	55
14.2 Criminal Activity of Contractor .....	56
14.3 Remedies for Contractor Default.....	57
14.4 Waiver.....	57
14.5 Contractor’s Payment of Damages .....	58
14.6 Liquidated Damages .....	58
14.7 Default by the City.....	59
14.8 Remedies Upon Default by the City .....	60
14.9 Excuse from Performance.....	60
<b>ARTICLE 15 OTHER AGREEMENTS OF THE PARTIES .....</b>	<b>61</b>
15.1 Relationship of Parties .....	61
15.2 Compliance with Law .....	61
15.3 Governing Law .....	61
15.4 Jurisdiction .....	61
15.5 Assignment .....	61
15.6 Binding on Assigns.....	64
15.7 Cooperation in Unforeseen Circumstances.....	64
15.8 Cooperation Upon Termination or Expiration of Agreement.....	64
15.9 Parties in Interest .....	65



15.10	Waiver .....	65
15.11	Contractor's Investigation .....	65
15.12	Notice .....	65
15.13	Delegation of Authority .....	66
15.14	Contractor's Representative .....	66
15.15	Compliance with Municipal Code .....	66
15.16	Exercise of Options .....	66
15.17	Cooperation and Disputes with Approved Site Operators .....	66
15.18	Payment of Taxes .....	66
15.19	Amendments .....	66
15.20	Dispute Resolution .....	67

**ARTICLE 16 MISCELLANEOUS PROVISIONS ..... 67**

16.1	Entire Agreement .....	67
16.2	Section Headings .....	68
16.3	References to Laws and Other Agreements .....	68
16.4	Interpretation .....	68
16.5	Agreement .....	68
16.6	Severability .....	68
16.7	Exhibits .....	68

**EXHIBITS**

Exhibit 1	Initial Gate Rates .....	70
Exhibit 2	Gate Rate Adjustment Method .....	71
Exhibit 3	Sample Calculation of Facility And CCPR Diversion Standards .....	81
Exhibit 4	Approved Subcontractors and Affiliates .....	82
Exhibit 5	Liquidated Damages .....	83
Exhibit 6	Per Item Rate Materials .....	85



*This page intentionally left blank*



## AGREEMENT

This Agreement for provision of material acceptance, Processing and transfer services ("Agreement") is entered into this 21<sup>st</sup> day of December, 2016, by and between the City of Tracy ("City") and Tracy Material Recovery & Solid Waste Transfer, Inc. a California corporation, organized and existing under the laws of the State of California ("Contractor"). This Agreement is entered into with reference to the following facts, circumstances, determinations and findings made by the City.

### RECITALS

WHEREAS, the State of California has found and declared that the amount of Mixed Municipal Waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfill Disposal, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program; and

WHEREAS, through enactment of the California Integrated Waste Management Act of 1989 ("AB 939") the State has directed the responsible State agency, and all local agencies, to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of Mixed Municipal Waste that must be Disposed of by land Disposal; and

WHEREAS, the City is now required by Applicable Law to Divert at least fifty percent (50%) of the City's waste, and can reasonably anticipate that additional Diversion requirements will increase during the term of this Agreement; and

WHEREAS, the City is now required by Applicable Law to make available recycling services to occupants of commercial and multifamily premises; and

WHEREAS, the City and Tracy Delta Solid Waste Management Inc. ("TDSWM") an affiliate of Contractor) have previously entered into that certain agreement for the collection, transportation and Disposal of refuse and garbage, including the collection of Recyclable Materials, in the City of Tracy, dated as of March 9, 1993 and amended from time to time; and

WHEREAS, the City and Contractor are Parties to the prior Service Agreement dated August 1, 1994 to site, construct and operate a material recovery facility and transfer station for the City and the unincorporated area of the southern portion of San Joaquin County; and,

WHEREAS, the Parties have entered a new agreement for use of the Tracy Material Recovery Facility and Transfer Station, entered into between the County of San Joaquin, City of Tracy and Tracy Material Recovery & Solid Waste Transfer, Inc., dated August 9, 2014 (the "County Agreement").

WHEREAS, the California Pollution Control Financing Authority Bonds to acquire and construct the facility will have been retired by August 1, 2014 and the existing Service Agreement as extended will terminate December 31, 2016; and

WHEREAS, the City wishes to enter a new Agreement with Contractor, superseding the August 1, 1994 Agreement between the City and Contractor, to: receive, transfer and transport Mixed Municipal Waste and Residue from Processing of Recyclable Materials to a City-approved Disposal site; receive, Process and sell Organic Materials to a City-approved composting site; and receive, Process and sell Recyclable



Materials, all in accordance with the terms and conditions of this Agreement; and

WHEREAS, the City intends that this Agreement will contribute to providing the most effective and efficient, municipal waste management services to its citizens.

WHEREAS, The City is authorized to grant an exclusive Agreement for solid waste handling. Under the proposed Agreement, City grants the exclusive right to Contractor to handle all post-collection waste generated within the City by: (1) receiving, transferring and transporting Mixed Municipal Waste and Residue resulting from the Processing of Recyclable Materials; (2) receiving, Processing and selling Organic Materials; and (3) receiving Processing and selling Recyclable Materials. The granting of this exclusive Agreement does not affect the rates paid by ratepayers under the current Collection Agreement with Tracy Delta Solid Waste Management, Inc. as of the Commencement Date.

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

## **ARTICLE 1**

### **DEFINITIONS**

The terms used in this Agreement shall have the meaning set forth in this Article 1, and as defined elsewhere in this Agreement. In the event a term is not defined in this Agreement, then it shall have the meaning set forth in the Tracy Municipal Code or in Division 30, Part 1, Chapter 2 of the California Public Resources Code (with precedence given to definitions in the Tracy Municipal Code over conflicting definitions contained in the Public Resources Code). Words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms.

#### **1.1. AB 341**

"AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced from time to time.

#### **1.2. AB 939**

"AB 939" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented, superseded, and replaced from time to time

#### **1.3. Agreement**

"Agreement" means this written document, including all exhibits and attachments which are incorporated herein by reference, as this document may be amended and supplemented between the City and the Contractor, governing the handling of all post-collection waste as provided herein.

#### **1.4. Applicable Law**

"Applicable Law" means all laws, statutes, rules, regulations, guidelines, Permit conditions, Permits, actions, determinations, orders, approvals or requirements of the United States, State, regional or local



government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, as amended from time to time, that from time to time apply to or govern Services or the performance of the Parties' respective obligations under this Agreement, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation conditions and monitoring plans in accordance with environmental impact statements, conditional use permits; building codes, zoning, non-discrimination; and the transfer or Disposition of solid waste, Organic Materials, and Recyclable Materials, and including but not limited to:

- (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 U.S.C. Section 9601 *et seq.*);
- (2) the Resource Conservation and Recovery Act, (42 U.S.C. Section 6901 *et seq.*);
- (3) the Clean Air Act, (42 U.S.C. Section 1351 *et seq.*, 42 U.S.C. Section 7401-7642); and the California Clean Air Act (Health & Safety Code Sections 1251 *et seq.* and Health and Safety Code Sections 39000 *et seq.*);
- (4) the Emergency Planning and Community Right to Know Act, (42 U.S.C. Section 11001 *et seq.*)
- (5) the Occupational Safety and Health Act, (29 U.S.C. Section 651 *et seq.*), including the Solid Waste Disposal Facility Criteria promulgated by the U.S. EPA on October 9, 1991 (40 C.F.R., Parts 257 and 258); and the California Occupational Safety and Health Act (California Labor Code, Division 5, Parts 1-10, Section 6300 *et seq.*);
- (6) the California Hazardous Waste Control Act, (California Health & Safety Code, Section 25100 *et seq.*);
- (7) California Hazardous Materials Release Response Plan and Inventory Act (California Health & Safety Code, Division 20, Chapter 6.95, Section 25500 *et seq.*);
- (8) the Carpenter-Presley-Tanner Hazardous Substance Account Act, (California Health & Safety Code Section 25300 *et seq.*);
- (9) California Underground Storage Tank Act, (California Health & Safety Code, Section 25280 *et seq.*);
- (10) the Porter-Cologne Water Quality Control Act, (California Water Code Section 13000 *et seq.*);
- (11) the Safe Drinking Water and Toxic Enforcement Act, (California Health and Safety Code Section 25249.5 *et seq.*);
- (12) "Proposition 65" (California Health & Safety Code, Section 25249.5 *et seq.*, and Health & Safety Code Section 25192);
- (13) "Calderon Legislation" (former California Government Code, Sections 66796.53 and 66796.54, now California Public Resources Code Sections 45300-04, 45700, California Health & Safety Code Sections 40511, 41805.5, and 42311.5, and California Water Code Section 13273);
- (14) Title 14 California Code of Regulations;



(15) Title 22 California Code of Regulations;

(16) Title 27 California Code of Regulation; and

(17) "Subchapter 15" (Title 23 California Code of Regulations, Sections 2510-2610).

Any other government required rules, guidelines, laws, statutes, etc. which are imposed upon Contractor and not discretionary, governing the provision of the services outlined within this Agreement.

### **1.5. Approved Disposal Site(s)**

"Approved Disposal Site(s)" means the Disposal site(s) approved by the City for Contractor's Disposal of Mixed Municipal Waste and Residue from the Facility. As of the Commencement Date the Approved Disposal Site is the Foothill Landfill, owned and operated by San Joaquin County.

### **1.6. Approved Organics Processing Site(s)**

"Approved Organics Processing Site(s)" means the Processing site(s) approved by the City for Contractor's Processing of Organic Materials. As of the Commencement Date the Approved Organics Processing Site is the Tracy Material Recovery Facility and Transfer Station, owned and operated by Contractor.

### **1.7. Approved Recyclables Processing Site(s)**

"Approved Recyclables Processing Site(s)" means the Recyclable Materials Processing site(s) approved by the City for Contractor's Processing of Recyclable Materials. As of the Commencement Date the Approved Recyclables Processing Site is the Tracy Material Recovery Facility and Transfer Station, owned and operated by Contractor.

### **1.8. Average Recyclable Per Ton Revenue**

"Average Recyclable Per Ton Revenue" means the average revenue per Ton received over a Contract Year by Contractor from the sale of Recyclable Materials, net of shipping costs, except for scrap metal which shall not be included in this calculation.

### **1.9. Baseline MMW Tonnage**

"Baseline MMW Tonnage" means one hundred four thousand (104,000) Tons of Mixed Municipal Waste.

### **1.10. Baseline Recyclable Per Ton Revenue**

"Baseline Recyclable Per Ton Revenue" means one hundred fifty five dollars (\$155.00) per Ton and such adjustments to that amount as may be made in accordance with Section 3.3 (C) herein.

### **1.11. Change in Law**

"Change in Law" means the occurrence of any event or change in Applicable Law as follows:

- (A) the adoption, promulgation, modification, or change in judicial or administrative interpretation occurring after the date hereof which adoption, promulgation, codification, or change in judicial



- or administrative interpretation relates to any Applicable Law, other than laws with respect to taxes based on or measured by net income, or any unincorporated business, payroll, taxes levied by any tax board or employment taxes; or
- (B) any order or judgment of any federal, State or local court, administrative agency or governmental body issued after the date hereof issued specifically to a Party if:
- (i) such order or judgment is not also the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and
  - (ii) the Party relying thereon, unless excused in writing from so doing by the other Party, shall make or have made, or shall cause or have caused to be made, Reasonable Business Efforts in good faith to contest such order or judgment (it being understood that the contesting in good faith of such an order or judgment shall not constitute or be construed as a willful misconduct or negligent action of such Party); or
- (C) the imposition by a governmental authority or agency of any new or different material conditions in connection with the issuance, renewal, or modification of any Permit after the date hereof; or
- (D) the failure of a governmental authority or agency to issue or renew, or delay in the issuance or renewal of, or the suspension, interruption or termination of, any Permit after the date hereof, provided such failure to issue or the suspension or termination of any Permit is not the result of the willful misconduct or negligent action or inaction of the Party relying thereon or any third party for whom the Party relying thereon is directly responsible; or,
- (E) a Change in Law promulgated by the City shall not be a Change in Law excusing the performance of its obligations hereunder unless such City Change in Law was required in response to a Change in Law promulgated by another governmental body.

### 1.12 Change of Control

“Change of Control” means a sale or transfer which would result in less than sixty five percent (65%) of the aggregate of the stock of Contractor being beneficially owned by the Persons who were shareholders at the time of execution of this Agreement (“Shareholders”), as set forth below, or siblings, children, parents or heirs of the Shareholders (collectively, the “Related Persons”) or any company, trust or other entity in which the Shareholders or Related Persons have at least a sixty five percent (65%) interest (each a “Related Entity” and collectively, “Related Entities”) or any combinations thereof.

The ownership and ownership shares as of the execution of this Agreement are:

1. Geri Rosaia, Trustee of the David Rosaia and Norma Rosaia Revocable Living Trust dated April 20, 1990, 1,200 shares.
2. Michael K. Repetto, Trustee of the Michael K. Repetto Irrevocable Trust dated December 29, 2011, 400 shares.
3. Michael K. Repetto, Trustee of the Michael K. Repetto Revocable Trust dated November 4, 2009, 800 shares.
4. Curtis M. Repetto, Trustee of the Curtis M. Repetto Irrevocable Trust dated December 29, 2011, 400 shares.



5. Curtis M. Repetto, Trustee of the Curtis M. Repetto Revocable Trust dated September 10, 2008, 800 shares.

### **1.13 City**

"City" means the City of Tracy, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the term of this Agreement.

### **1.14 City Curbside Program Recyclables**

"City Curbside Program Recyclables" means Recyclable Materials collected within the City by the Collection Franchisee pursuant to the curbside collection program under its current Collection Agreement or any future program by which the City arranges or mandates collection of such material.

### **1.15 City Curbside Program Recyclables (CCPR) Diversion Standard**

"City Curbside Program Recyclables (CCPR) Diversion Standard" means Contractor's Obligation to conduct its Recovery and Processing activities in such a manner that Contractor Diverts at least eighty eight percent (88%) of the Recyclable Materials from the City curbside collection program delivered to the Facility in the manner set forth in Section 4.6.2 and Exhibit 3 of this Agreement.

### **1.16 City Hauler**

"City Hauler" means City staff that may deliver Covered Materials directly to the Facility on behalf of the City.

### **1.17 Collection Agreement**

"Collection Agreement" means the document between City and Collection Franchisee entitled "Franchise Agreement for the Collection, Transportation, and Disposal of Refuse and Garbage, Including the Collection of Recyclable Material, in the City of Tracy", as in force on the Commencement Date and as subsequently amended or any future document or documents for a substantially similar purpose between the City and a Collection Franchisee.

### **1.18 Collection Franchisee**

"Collection Franchisee" means Tracy Delta Solid Waste Management, Inc. an affiliate of Contractor or any future Person with whom the City Contracts to collect Covered Materials.

### **1.19 Commencement Date**

"Commencement Date" means January 1, 2017.

### **1.20 Construction and Demolition Debris**

"Construction and Demolition Debris" means used or discarded construction materials removed from a premise during the construction or renovation of a structure resulting from construction, remodeling, repair, or demolitions operations on any pavement, house, commercial building, or other structure including, but not limited to, concrete, brick, wood, dirt, rock, cardboard, packaging materials, etc.



### **1.21 Contract Year**

"Contract Year" means each year commencing January 1 and ending December 31.

### **1.22 Contractor**

"Contractor" means Tracy Material Recovery & Solid Waste Transfer, Inc., a California corporation organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies and Subcontractors or any successor thereto or assignee thereof but only if such successor or assignee is qualified as such pursuant to this Agreement.

### **1.23 Contractor's Obligations**

"Contractor's Obligations" means all obligations of the Contractor, under this Agreement, whether express or implied.

### **1.24 County Agreement**

"County Agreement" means the agreement for use of the Tracy Material Recovery Facility and Transfer Station, entered into between the County of San Joaquin, City of Tracy and Tracy Material Recovery & Solid Waste Transfer, Inc., dated August 9, 2014.

### **1.25 Covered Material**

"Covered Material" means material that the Facility may receive under its Permits and Applicable Law, including, but not limited to:

- Mixed Municipal Waste,
- Recyclable Materials,
- Food Scraps,
- Organic Materials,
- Construction and Demolition Debris,
- Appliances and such other items as are listed in Exhibit 6 to this Agreement, as it may be adjusted by Contractor,
- Recyclable Household Hazardous Waste, and,
- E-Waste.

The Parties shall promptly revise this definition of "Covered Material" to reflect any changes in Permits and Permit requirements.

### **1.26 CPI-U**

"CPI-U" means the Consumer Price Index, All Urban Consumers (All Items), for the San Francisco/Oakland Metropolitan Area as published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index"). Series ID: CUURA422SA0 or such index as may in the future replace it.

### **1.27 Customer**

"Customer" means any Person using the services of the Facility as provided by Contractor.



### **1.28 Disposal, Dispose**

"Disposal" or "Dispose" means the final disposition of Mixed Municipal Waste that is not intended for Processing and Residue from the Facility by the Contractor at an Approved Disposal Site. Disposal does not include the use of Organic Materials as alternative landfill cover so long as the City and State regulations consider alternative landfill cover use of Organic Materials as Diversion under AB 939.

### **1.29 Diversion Standards**

"Diversion Standards" means the CCPR Diversion Standard and the Facility Diversion Standard.

### **1.30 Divert, Diversion**

"Divert" or "Diversion" means to prevent Recyclable Materials from Disposal at Disposal sites through source reduction, reuse, recycling, composting, conversion and/or transformation, as provided in Section 41780-41786 of AB 939 as it may hereafter be amended or superseded. Diversion is a broad concept that is to be inclusive of new technology and material handling and Processing changes that may occur over the term of this Agreement, including, but not limited to, implementation of innovative techniques or technology, transformation or conversion, that may reduce Disposal, decrease costs and/or are for other reasons deemed desirable by Contractor and the City.

### **1.31 E-Waste**

"E-Waste" means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices. Some E-Waste or components thereof may be Hazardous Waste, Unpermitted Waste, or include hazardous substances and thus require special handling, Processing, or Disposal.

### **1.32 Facility**

"Facility" means the Tracy Material Recovery Facility and Transfer Station at 30703 South MacArthur Drive, Tracy, California.

### **1.33 Facility Diversion Standard**

"Facility Diversion Standard" means Contractor's Obligation to conduct its Recovery and Processing activities in such a manner that Contractor Diverts a percentage of the Covered Materials, except Mixed Municipal Waste delivered to the Facility in the manner set forth in Section 4.6.1 of this Agreement.

### **1.34 Facility Holiday(s)**

"Facility Holiday(s)" means New Years Day, Thanksgiving, Christmas, and any day Monday through Saturday that the Approved Disposal Site is closed.

### **1.35 Federally Approved Holiday(s)**

"Federally Approved Holiday(s)" means New Years Day, Presidents Day, Labor Day, Memorial Day, July 4th, Thanksgiving, and Christmas.





### 1.36 Food Scraps

"Food Scraps" means those discarded materials that will decompose and/or putrefy including (i) all kitchen and table food waste, (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking, or handling of food stuffs, (iii) discarded paper that is contaminated with food waste and materials; (iv) fruit waste, grain waste, dairy waste, meat and fish waste; and, (v) non-recyclable paper or contaminated paper. Food Scraps are a subset of Organic Materials.

### 1.37 Gate Rates

"Gate Rate(s)" means the per Ton fees that are approved by the City and required to be charged by Contractor to the Collection Franchisee delivering Covered Materials collected from within the City for acceptance of such materials at the Facility under this Agreement. Gate Rates are provided in Exhibit 1 and adjusted in accordance with Article 11.

### 1.38 Gross Rate Revenues

"Gross Rate Revenues" means the total amount of revenues received by the Contractor from Customers of the Facility, not including income from the sale of Recyclable Materials.

### 1.39 Hazardous Waste

"Hazardous Waste" is any waste which is defined or regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, including:

- (A) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; all substances defined as acutely hazardous waste, extremely hazardous waste or hazardous waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), and future amendments to or recodification of such statutes or regulations promulgated there under;
- (B) "Hazardous Substances" as defined under Chapter 6.8 of the California Health and Safety Code, Division 20, Sections 25316 and 25317;
- (C) Materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal, State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;
- (D) Materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., as amended, and regulations promulgated there under;
- (E) Materials regulated under The Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281; and,
- (F) Materials regulated under any future additional or substitute federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or Disposal of toxic substances or Hazardous Waste.

If two (2) or more governmental agencies having concurrent or overlapping jurisdiction over Hazardous Waste adopt conflicting definitions of "hazardous waste", for purposes of collection, transportation, Processing and/or Disposal, the broader, more restrictive definition shall be employed for purposes of



this Agreement.

#### **1.40 Household Hazardous Waste**

“Household Hazardous Waste” means those wastes resulting from products used by the general public for household purposes which, because of their quantity, concentration, or physical or chemical characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, Disposed, or otherwise managed.

#### **1.41 Maximum Incentive Tonnage**

“Maximum Incentive Tonnage” means one hundred nineteen thousand (119,000) Tons of Mixed Municipal Waste.

#### **1.42 Mixed Municipal Waste**

“Mixed Municipal Waste” means residential, commercial and industrial garbage and/or rubbish. Mixed Municipal Waste may include materials that would have been defined as Organic Materials, Recyclable Materials, Recyclable HHW, E-Waste, and Construction and Demolition Debris if such materials had been source separated from the Mixed Material Waste prior to delivery to the Facility.

#### **1.43 Non-Resident Self-Haulers**

“Non-Resident Self-Haulers” means Persons that do not reside in the City that deliver Covered Materials directly to the Facility on their own behalf, and not as a licensed, commercial hauling enterprise collecting Covered Material for third parties or on behalf of a municipality.

#### **1.44 Notice**

“Notice” or “Notify” (or other variation thereof) means notification given in accordance with Section 15.12.

#### **1.45 Organic Materials**

“Organic Materials” means those discarded materials that will decompose and/or putrefy and that the City’s Municipal Code permits, directs, and/or requires generators to separate from solid waste and Recyclable Materials for collection in specially designated containers for Organic Materials collection. Organic Materials include Yard Trimmings, Food Scraps and such other items as, but not limited to, wood waste, polylactide (PLA) products, and pieces of unpainted and untreated wallboard. No discarded material shall be considered to be Organic Materials, however, unless such material is source separated from other Covered Materials prior to delivery to the Facility or Recovered from other Covered Materials at the Facility.

#### **1.46 Other Franchised Users**

“Other Franchised Users” means all Persons delivering Covered Material to the Facility that hold an exclusive franchise, contract or similar right to collect such Covered Material.

#### **1.47 Other Users**

“Other Users” means all Persons delivering Covered Material to the Facility other than the Collection Franchisee or City Hauler.



#### **1.48 Party(ies)**

“Party(ies)” means the City and the Contractor, individually and together.

#### **1.49 Per Item Rates**

“Per Item Rates” means those specific rates charged by Contractor to Customers for the acceptance and Processing of the types of materials listed in Exhibit 6 to this Agreement.

#### **1.50 Permit(s)**

“Permit(s)” means all federal, State, City, other local and any other governmental unit permits, orders, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any Person with respect to the Facility or the performance of any obligation under this Agreement, as renewed or amended from time to time.

#### **1.51 Person**

“Person” means any individual, firm, association, organization, partnership, corporation, trust, joint venture, the United States, the State, a county, a municipality or special purpose district or any other entity whatsoever.

#### **1.52 Process/Processing**

“Process,” or “Processing” (or any other variation thereof), means baling, crushing, shredding, chipping, grinding, extracting, hand picking and any other operation or series of operations, whether involving equipment, manual labor, or mechanical or biological processes that sorts, enhances, upgrades, concentrates, decontaminates, packages or otherwise prepares Covered Materials and returns marketable elements thereof to the economic mainstream in the form of raw material for new, reused or reconstituted product.

#### **1.53 Reasonable Business Efforts**

“Reasonable Business Efforts” means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of such Person's business judgment, intending in good faith to take steps calculated to satisfy the obligation which such Person has undertaken to satisfy; provided that such Person and/or any enterprise by which such Person is employed would not incur a financial loss (other than time expended or otherwise compensated for such efforts herein) by reason of having expended or expending such efforts.

#### **1.54 Recovered Materials**

“Recovered Materials” means Recyclable Materials and Organic Materials Recovered from Covered Materials.

#### **1.55 Recovery**

“Recovery,” or “Recover” or “Recovered” (or other variations thereof), means the Processing of Recyclable Materials and Organic Materials from Covered Material, whether by manual or mechanical means, by the Contractor at the Facility.



### **1.56 Recyclable Household Hazardous Waste**

“Recyclable Household Hazardous Waste” means automobile batteries, motor oils, anti-freeze, oil filters and water-based paint resulting from products used by the general public for household purposes.

### **1.57 Recyclable Materials**

“Recyclable Materials” means those materials designated in this Agreement which are segregated from Mixed Municipal Waste by the service recipient at the source of generation. Recyclable Materials include newspaper, mixed paper (including white and colored paper, magazines, telephone books, chipboard, junk mail and high grade paper), glass containers, metal containers (ferrous, non-ferrous and bi-metal containers including empty aerosol containers), aluminum foil and trays, milk and juice cartons, soup and juice boxes, all narrow neck rigid plastic containers, non-bottle rigid plastics, and corrugated cardboard. City and Contractor may mutually agree to include additional materials or remove materials from this list of Recyclable Materials.

### **1.58 Recyclable Material Incentive Fee**

“Recyclable Material Incentive Fee” means an amount equal to forty percent (40%) of the amount by which the Average Recyclable Per Ton Revenue for that Contract Year exceeds one hundred twenty five percent (125%) of the Baseline Recyclable Per Ton Revenue for that Contract Year multiplied by the number of Tons of Recyclable Material sold by the Contractor in such Contract Year that are allocated to the City.

### **1.59 Resident Self-Haulers**

“Resident Self-Haulers” means Persons that reside in the City that deliver Covered Materials directly to the Facility on their own behalf, and not as a licensed, commercial hauling enterprise collecting Covered Material for third parties or on behalf of a municipality.

### **1.60 Residue**

“Residue” or “Residual” (or other variations thereof), means remaining Covered Material following Recovery and Processing thereof, if any, that require Disposal.

### **1.61 State**

“State” means the State of California.

### **1.62 Subcontractor(s)**

“Subcontractor” means a Person who has entered into a contract, express or implied, with the Contractor for the performance of an act on Contractor’s behalf (i) that involves accepting, Processing, Diverting, marketing, or transporting solid waste, and/or other handling of Covered Materials (excluding transporting Recyclable Materials), and (ii) that is necessary for the Contractor’s fulfillment of Contractor’s Obligations. Vendors providing materials, supplies and equipment maintenance services to Contractor shall not be considered Subcontractors.

### **1.63 Ton or Tonnage**

“Ton” or “Tonnage” means a short Ton of 2,000 pounds.



#### **1.64 Tonnage Incentive Fee**

"Tonnage Incentive Fee" means four dollars (\$4.00) per Ton and such adjustments to that amount as may be made in accordance with Section 3.2 (C) herein.

#### **1.65 Uncontrollable Circumstance(s)**

"Uncontrollable Circumstance(s)" means an act of nature, landslide, lightning, earthquake, fire, flood, (other than reasonably anticipated weather conditions for the geographic area of the Facility), explosion, sabotage, acts of a public enemy, war, blockade or insurrection, riot or civil disturbance or any other act, event or condition, whether affecting the Facility or either Party beyond the reasonable control of such Party and not the result of willful or negligent action or inaction of such Party (other than the contesting in good faith or the failure in good faith to contest such action or inaction), which materially and adversely affects the ability of either Party to perform any obligation hereunder, but excluding:

- (A) Either Party's own breach of its obligations hereunder;
- (B) Adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any unincorporated business, payroll, or employment taxes;
- (C) The consequences of errors in performing Contractor Obligations on the part of the Contractor, its employees, agents, Subcontractor or affiliates,, including failure to comply with the operations and maintenance manual and Contractor's failure to adequately update the manual;
- (D) Labor unrest including, but not limited to, strikes, work stoppages or slowdowns, sick-outs, picketing, or other labor disputes or disturbances conducted by Contractor's employees or directed at Contractor or by any Subcontractor performing services related to Contractor Obligations;
- (E) The failure of the Contractor to secure patents, licenses, trademarks, and the like necessary for Contractor Obligations; and,
- (F) As to the Contractor, the failure of any Facility technology to perform in accordance with industry standards, unless caused by Uncontrollable Circumstances.

#### **1.66 Unpermitted Waste**

"Unpermitted Waste" means wastes that the Facility may not receive under its Permits, including:

- (A) Agricultural wastes comprised of animal manures;
- (B) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be a Hazardous Waste if it contains more than one percent (1%) asbestos;
- (C) Ash residue from the incineration of Mixed Municipal Waste, including infectious waste described in item (H) below, wood waste, sludge, and agricultural wastes described in item (A) above;
- (D) Auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances which remains after the shredding of automobiles;
- (E) Large dead animals;



- (F) Hazardous Wastes, explosives, ordnance, highly flammable substances and noxious materials;
- (G) Industrial solid or semi-solid wastes resulting from industrial processes and manufacturing operations, including cement kiln dust, ore process residues and grit or screenings removed from waste water treatment facility;
- (H) Infectious wastes which have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, blades, tubing, bottles, drugs, patient care items such as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases;
- (I) Liquid wastes which are not spadeable, usually containing less than fifty (50%) percent solids, including cannery and food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge, and those liquid wastes which may be Hazardous Wastes;
- (J) Radioactive wastes as defined in Section 114710 of the California Health and Safety Code and any waste that contains a radioactive material, the storage or Disposal of which is subject to any other State or federal regulation;
- (K) Sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed from a waste water treatment facility or septic tank, whether in a dry or semidry form;
- (L) Special wastes designated from time to time by the California Integrated Waste Management Board, including contaminated soil; and
- (M) Bulky items that cannot fit within standard roll-off containers or Mixed Municipal Waste collection vehicles unless otherwise approved by Contractor.

Parties shall promptly revise this definition of "Unpermitted Waste" to the extent necessary to comply with Applicable Law, should a Change in Law or in Permits and Permit requirements necessitate.

### 1.67 Yard Trimmings

"Yard Trimmings" means those discarded materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste. Yard Trimmings are a subset of Organic Materials.

## ARTICLE TERMS OF AGREEMENT

2

### 2.1 Term of Agreement

The term of this Agreement shall be for a twenty (20) year period commencing on January 1, 2017, and expiring on December 31, 2037 subject to extension as provided herein and the provisions of Section 15.5.2 (A) unless terminated earlier by the City pursuant to Article 14 of this Agreement.



## 2.2 Option to Extend Term

The City shall have the sole right to approve or deny any extensions of the term of this Agreement beyond the initial term for up to five (5) years for a maximum term of approximately twenty five (25) years including the initial term and any extensions thereof. No less than three hundred sixty five (365) calendar days prior to the expiration of the initial term of this Agreement or any extensions thereof, the City or the Contractor may request an extension of the then current term by providing Notice of such request to the other Party.

If either Party requests such extension, the City or Contractor may request a meeting to discuss modifications to the Agreement. City reserves the right to negotiate modifications to the Agreement as a condition to the extension of the term, subject to approval by both Parties. In the event the Parties have not agreed to proposed revisions to this Agreement no later than one hundred eighty (180) calendar days prior to the end of the term or then current extension, the Agreement shall terminate at the end of the term or then current extension.

The City has no obligation to renegotiate, renew, or otherwise extend the rights granted to Contractor beyond the initial term of the Agreement.

## 2.3 Survival of Certain Provisions

All representations and warranties of the Parties herein, and all indemnifications provided for herein, and any other rights and obligations of the Parties expressly stated to survive the expiration or early termination of this Agreement, shall survive such expiration or early termination, including payment of any amounts due and owing by either Party to the other Party at the time of expiration or early termination.

## 2.4 Representations and Warranties of Contractor

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

- (A) Contractor Status. Contractor represents and warrants that it is a corporation duly organized, validly existing and in good standing under Applicable Laws. It is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.
- (B) Authority and Authorization. Contractor represents and warrants that it has the authority to enter into and perform Contractor's Obligations under this Agreement. The Board of Directors or partners of Contractor (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws, or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of Contractor have authority to do so. Contractor shall authorize one (1) employee and one (1) backup employee for the Contractor as a single point of contact for issues arising under this Agreement, and Contractor acknowledges and agrees that City may expect and assume that this employee's actions are taken on behalf of and with the full approval of the Contractor. If the Contractor chooses to replace its designated representative, or the designated backup employee, the new employee contact information must be provided to the City in writing within one (1) work day of the replacement.
- (C) No Conflicts. Neither the execution or delivery by the Contractor of this Agreement, the



performance by the Contractor of Contractor's Obligations required by this Agreement, nor the fulfillment by the Contractor of the terms and conditions hereof: (1) conflicts with, violates or results in a breach of any Applicable Law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default there under; or (3) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Contractor.

- (D) No Litigation. There is no action, suit or other proceeding as of the date of this Agreement, at law or in equity, or to the best of Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against Contractor which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement in connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of Contractor to perform Contractor's Obligations hereunder or which would have a material adverse effect on the financial condition of Contractor.
- (F) No Approvals. No approval, authorization, license, Permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by Contractor, except such as have been duly obtained. Contractor has all licenses, Permits, City business license, qualifications and approvals of whatsoever nature which are legally required for Contractor to provide services hereunder and meet Contractor's Obligations hereunder, and Contractor further warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement all licenses, Permits, and approvals which are legally required for Contractor to provide such services and meet Contractor's Obligations under this Agreement.

## 2.5 Conditions to Effectiveness of Agreement

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

- (A) Furnishing of Insurance. Contractor shall have furnished evidence of the insurance required by Section 13.3, and shall comply with all ongoing requirements relating thereto.
- (B) Proprietary Products. The Contractor shall have received the right to use proprietary technology, processes and equipment, if any, necessary for the operation and maintenance of the Facility in accordance with the provisions hereof for the term of this Agreement.
- (C) Guaranty. As a condition to the continued effectiveness of the Agreement after an assignment of Contractor's rights and obligations hereunder as provided in Section 15.5 hereof, if such Guaranty is required by Section 15.5.2 (C), the assignee shall have caused such Guaranty to be executed.
- (D) Audited Financial Statement. Contractor shall provide the most recent financial statement presenting the financial results of operations of the Facility and prepared in accordance with Generally Accepted Accounting Practices for year ending December 31, 2015, audited by an independent, certified public accountant that shall conduct the audit in accordance with





Generally Accepted Auditing Standards and issue an unqualified opinion.

## ARTICLE FEES AND PAYMENTS DUE TO CITY

3

### 3.1 General

In addition to any other consideration set forth herein, as part of its consideration for entering into this Agreement, and for the right and privilege to provide Covered Materials handling services and other Contractor Obligations as specified herein, Contractor shall pay to the City fees and payments described in this Article. The fees and payments described in this Article 3, which are due to City by Contractor, were not imposed on the Contractor, but were freely negotiated terms voluntarily entered into by the Parties.

### 3.2 Tonnage Incentive Fee

- (A) The Parties acknowledge that this Agreement and the Contractor's compensation hereunder are in part based on the Tonnage of Mixed Municipal Waste expected to be delivered to the Facility. If substantial additional Mixed Municipal Waste is delivered and accepted at the Facility from the average Tonnage delivered at the time of execution of this Agreement, there may be economic benefit to the Contractor. In order to provide incentive to the Contractor to contract for, or otherwise arrange for such additional Tonnage while at the same time keeping the cost to the City and its residents as low as is practical, the Contractor agrees to share any such benefit by paying to the City the amounts described in this Section.
- (B) If the total Tonnage of Mixed Municipal Waste delivered to and accepted by the Facility exceeds the Baseline MMW Tonnage, the Contractor will pay to the City the Tonnage Incentive Fee for each Ton of Mixed Municipal Waste which exceeds the Baseline MMW Tonnage in such Contract Year up to a total of the Maximum Incentive Tonnage. For the avoidance of doubt, a sample calculation is provided below:

**Example:**

A. Baseline MMW Tonnage	104,000
B. Actual MMW Tonnage for Future Contract Year	114,000
C. Tonnage Eligible for Tonnage Incentive Fee (B-A)	10,000
D. Tonnage Incentive Fee (per ton)	\$ 4.00
E. Total Payment Due to City Due to Tonnage Incentive Fee (C X D)	\$ 40,000

- (C) The Tonnage Incentive Fee described above in subsection 3.2 (B) shall be increased annually by one hundred percent (100%) of the annual percentage change in the CPI-U as determined in accordance with Exhibit 2.
- (D) No payment shall be due for Tonnage of Mixed Municipal Waste which exceeds the Maximum Incentive Tonnage but in the event Tonnage above that level is accepted at the Facility, the Parties shall meet and confer on the feasibility of any additional Tonnage Incentive Fee on Tonnage above the Maximum Incentive Tonnage, and if feasible, they shall negotiate modifications to this Section 3.2 and the result of those negotiations shall describe the new Tonnage Incentive Fee for those Tons in excess of the Maximum Incentive Tonnage. The feasibility of any additional fee shall be determined by taking into account additional costs that will be incurred by Contractor due to receipt of Tonnage over the Maximum Incentive Tonnage



including, without limitation: additional labor and other operating costs; additional maintenance costs; the acquisition of additional equipment or rolling stock or modifications to the Facility needed in order to Process the additional Tonnage including debt service on any funds borrowed for those purposes; and a reasonable profit.

### 3.3 Recyclable Material Revenue Sharing

- (A) The Parties also acknowledge that if total revenues from the sale of City Curbside Program Recyclables significantly exceed those received as of the execution of this Agreement, the Contractor will likely realize economic benefit and the Parties agree that the City should share in any such benefit.
- (B) In any Contract Year the Average Recyclable Per Ton Revenue shall exceed the Baseline Recyclable Per Ton Revenue by more than twenty five percent (25%), the Contractor shall pay to the City a Recyclable Material Incentive Fee. For the avoidance of doubt, a sample calculation is shown below:

<b>Example</b>	<b>Per Ton</b>
A. Baseline Recyclable Per Ton Revenue	\$ 155.21
B. 125% of Baseline Recyclable Per Ton Revenue (125% X A)	\$ 194.01
C. Average Recyclable Per Ton Revenue for Future Contract Year	\$ 215.00
D. Amount of Additional Revenue Per Ton over 125% of Baseline Revenue (C-B)	\$ 20.99
E. Recyclable Material Incentive Fee (D X 40%)	\$ 8.39
Outbound Tons of City Curbside Program Recyclables	5,313.00
Recyclable Material Incentive Fee Per Ton	\$ 8.39
Recyclable Material Incentive Fee Payment to City of Tracy	\$ 44,603

- (C) The Baseline Recyclable Per Ton Revenue shall be increased annually by one hundred percent (100%) of the annual percentage change in the CPI-U as determined in accordance with Exhibit 2.

## ARTICLE GENERAL FACILITY OPERATIONS

**4**

### 4.1 General

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

The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that City and all Customers are provided reliable, courteous and high-quality service at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this Section, whether such other aspects are enumerated elsewhere in the Agreement or not.



Contractor will fulfill all requirements relating to Contractor Obligations in accordance with accepted practice for comparable facilities, sound management and operations practice, Permits, Applicable Law, the provisions hereof, and covenants, conditions and restrictions pertaining to the Facility.

## **4.2 Receiving and Operating Hours**

Contractor shall operate and maintain the Facility at all times in accordance with Permits. Hours of operation are 8:00 a.m. to 4:00 p.m. Monday through Saturday except for Facility Holidays. If Contractor cannot accept Covered Material or operate the Facility during normal hours of operation for any reason, it shall give the City immediate telephonic notice followed by written Notice, including the nature and expected duration of the shutdown and its impact on Contractor's ability to fulfill Contractor's Obligations under this Agreement, provided such Notice shall not relieve the Contractor of Contractor's Obligations under this Agreement, including payment of any damages unless otherwise excused by the provisions hereof.

## **4.3 Weighing**

### **4.3.1 Installation, Operation and Maintenance.**

The Contractor shall maintain State certified motor vehicle scales in accordance with Applicable Law. All scales shall be linked to the Contractor's centralized computer recording and billing system for all incoming and outgoing materials. Contractor will follow procedures and collect, at a minimum, the information described in Section 12.2.

Contractor's licensed weigh master shall weigh at the scale house all materials entering and exiting the Facility other than materials delivered by Resident and Non-Resident Self-Haulers or materials that are accepted pursuant to a Per-Item Rate on which fees are not calculated based on weight, in compliance with Applicable Law. The City and its representatives shall have access to the scale house during operating hours and may observe weighing operations.

Contractor shall provide back-up generator(s) capable of supplying power to the scales in the event of a power outage.

### **4.3.2 Vehicle Tare Weights**

Contractor shall within ten (10) working days of the Commencement Date provide City with the current tare weights of all Contractor vehicles that deliver to the Facility, and all transfer or other vehicles that transport materials from the Facility, to determine unloaded weight ("tare") weight of each vehicle, with an assigned number and vehicle description for each. Contractor shall record tare weight and vehicle identification number for each such vehicle and within ten (10) working days of weighing Contractor shall provide City with a report listing vehicle tare weight information. When additional or replacement vehicles are placed into service, Contractor shall promptly weigh such additional and replacement vehicles and provide the tare weight(s) to City. City shall have the right to request re-taring of vehicles as reasonably required to ensure accuracy but not more than two (2) times per Contract Year.

### **4.3.3 Substitute Scales**

To the extent practicable, if any scale is inoperable, being tested or otherwise unavailable, vehicles shall be weighed on the remaining operating scales. To the extent that all the scales are inoperable, being tested, or otherwise unavailable, the Contractor shall substitute portable scales until the permanent scales are replaced or repaired. Contractor shall arrange for any inoperable scale to be repaired as soon



as possible, and in any event, within seventy-two (72) hours (excluding Federally Approved Holidays) of the failure of the permanent scale. Contractor shall arrange to immediately obtain a temporary substitute scale(s) should the repair of the permanent scale require more than seventy-two (72) hours, (excluding Federally Approved Holidays).

#### **4.3.4 Estimates**

Pending substitution of portable scales, the Contractor shall estimate the quantity of Covered Material being delivered to the Facility and Mixed Municipal Waste and Residue being transported from the Facility, on the basis of delivery truck and transfer trailer volumes, tare weights, landfill and/or Processing and composting facility weight records, and data obtained through historical information. These estimates shall take the place of actual weighing and shall be the basis for records while scales are inoperable.

#### **4.3.5 Scale Testing**

The Contractor shall arrange for the County of San Joaquin's Weights and Measures Program to test and calibrate all scales in accordance with Applicable Law, but at least three (3) times annually (every six (6) months and once on a randomly selected work day). Prior to any test, Contractor shall provide at least five (5) days' Notice thereof to the City, unless such test is conducted by the State or other regulatory entity without advance Notice to Contractor. Contractor shall provide the City with copies of test results. Contractor may use a third party for scale testing, with prior written City approval.

If the testing schedule is performed in accordance with this Section and the test results indicate scale inaccuracies, no adjustment of Gate Rates calculated, charged and paid, as the case may be, shall be made retroactively. However, if the scale testing schedule described in this Section is not maintained and scale test results indicate that the scale or scales did not comply with Applicable Law, then all weight measurements recorded and Gate Rates calculated, charged and paid, as the case may be, from the date of such test, shall be adjusted by Contractor and corrected consistent with the results of such test. The Contractor shall further test and calibrate any or all scales upon written request therefore by the City, within three (3) work days of such request.

### **4.4 Contractor Commitment to Deliver and Accept Covered Materials**

#### **4.4.1 Collection Franchisee Covered Materials**

City agrees to direct all Covered Materials its Collection Franchisee collects from City customers to the Facility, or in the event that at any time, the City takes over collection of all or a portion of Covered Materials from the Collection Franchisee, the City shall deliver all such Covered Materials to the Facility. In such event, the City and Contractor agree to meet and confer to discuss any resulting changes in Gate Rates that may result from changes to the volumes of material delivered to the Facility.

#### **4.4.2 County Users Covered Materials**

The City and Contractor have entered into the County Agreement, which requires *inter alia*, that the County deliver, or cause to be delivered, all of the municipal solid waste from the area designated in the County Agreement to the Facility.

#### **4.4.3 Agreements with Other Users**

Contractor has the right to enter into agreements with Other Users for acceptance of Covered Materials



at the Facility to the extent Facility throughput capacity is available, in the following order of priority: (1) Collection Franchisee, City Haulers, and Other Franchised Users delivering material from inside the area designated in the County Agreement , (2) Resident Self-Haulers, and (3) other categories of Other Users, including Other Franchised Users delivering material from outside the area designated in the County Agreement. City or Contractor may enter into agreements with Other Users subject to the terms specified below:

- (A) Gate Rates. Contractor may charge Other Users amounts other than Gate Rates for Covered Materials.
- (B) Tonnage Incentive Fees. Contractor shall pay applicable Tonnage Incentive Fees in accordance with Article 3.

#### **4.4.4 Contractor's Facility Throughput Guarantee**

Contractor guarantees to accept for transfer, Recovery, and Processing (as applicable): (i) all Covered Materials collected by the Collection Franchisee for the City that are delivered to the Facility and (ii) all Covered Materials delivered by City Haulers.

#### **4.4.5 City Delivered Material**

For the Contract Year beginning January 1, 2017, Contractor shall accept up to two thousand (2,000) Tons of Mixed Municipal Waste, Organic Materials or inert materials delivered to the Facility by the City or, at the direction of the City, by the City's Collection Franchisee, at no charge to the City (for the purpose of this Section "City Delivered Material"). Beginning with October 1, 2017 and each October 1<sup>st</sup> during the term of this Agreement, City shall notify the Contractor of the annual estimate of the Tons of City Delivered Material to be delivered to the Facility for the upcoming Contract Year. The cost of the increase or the decrease of the annual estimate of City Delivered Material for the upcoming Contract Year over the annual estimate from the current Contract Year shall be considered a pass-through cost and included in the Gate Rate adjustment methodology as set forth in Exhibit 2.

#### **4.5 Right to Enter and Inspect Facility**

City shall have the right, but not the obligation, to observe and inspect Facility operations including, but not limited to scale house, grounds, offices, maintenance shop, tipping floor, Recovery and Processing areas, materials storage areas and Recyclable Household Hazardous Waste and E-Waste collection area. In connection therewith, City and its representatives authorized by the Public Works Director, or his or her designee, shall have the right to enter the Facility at any time and speak to any of Contractor's employees. Without limiting such right, City and its representatives shall attempt to provide twenty four (24) hours Notice of its intent to enter the Facility. Upon arrival the City's representatives shall first present themselves to senior on-site management who shall provide a Contractor's representative to accompany the City's representatives during the visit. Such representatives shall comply with the Contractor's reasonable safety and security rules and shall not interfere with the work of the Contractor or its Subcontractors. Upon City request, Contractor shall make specified personnel available to accompany City representatives on inspections. Contractor shall ensure that its employees cooperate with the City and respond to the City's inquiries. Upon City request, Contractor shall make operational and business records required by this Agreement available to the City during Facility operating hours (specified in Section 4.2) and shall provide City copies of records at City's request.



## 4.6 Diversion Standards

### 4.6.1 Facility Diversion Standard

For Contract Year 2017 Contractor shall meet a minimum Facility Diversion Standard of eighty two percent (82%) by weight of all Covered Material, except Mixed Municipal Waste, delivered to the Facility under the terms of this Agreement. For Contract Year 2018 and annually thereafter during the term of this Agreement, Contractor shall meet a minimum Facility Diversion Standard that is no less than two (2) percentage points lower than the actual Facility Diversion Standard percentage from the preceding Contract Year. The Facility Diversion Standard rate shall be calculated on a quarterly basis and shall equal the total Tonnage of Diverted Materials divided by the total Tonnage of Covered Materials, adjusted for Organic Material shrinkage, except Mixed Municipal Waste delivered to the Facility during that period. An example of this calculation is provided below and in more detail in Table 1 of Exhibit 3.

$$\frac{\text{Tons Diverted}}{\text{Adjusted Tons of Covered Material, except Mixed Municipal Waste}} = \text{Facility Diversion \%}$$

#### 4.6.1.1 Measurement of Contractor's Compliance.

The Parties agree to measure Contractor's compliance with the Facility Diversion Standard based on the overall performance of the Facility for each Contract Year. On or before April 15<sup>th</sup> 2018 and April 15<sup>th</sup> of each Contract Year during the term of this Agreement, Contractor shall provide City with the Facility Diversion Standard percentage calculation for the prior Contract Year in the manner and format provided in Exhibit 3. In order to provide the City with an ongoing assessment of the status of the Contractor's Diversion performance, Contractor shall prepare an interim Facility Diversion Standard calculation on a quarterly basis for each of the first three (3) quarters of each Contract Year using the cumulative data for that period and submit the results of the calculation to the City within forty five (45) calendar days from the end of the quarter.

If the interim Facility Diversion rate, calculated as set forth above, is less than the Facility Diversion Standard, the Contractor shall, in addition to the calculations, provide a summary of the reason it believes the Standard was not met and any plans it has to remedy the failure. Upon City request, the Contractor shall meet with the City and confer to determine the cause for not meeting the interim Facility Diversion Standard and the actions necessary to meet the standard. If the annual Facility Diversion rate, calculated as set forth in Section 4.6.1 above, is less than the Facility Diversion Standard, the Parties shall meet and confer to determine an appropriate solution. In the event the Parties cannot reach agreement on an appropriate solution, the Parties shall utilize the dispute resolution procedures set forth in Section 15.20 of this Agreement.

In the event a material that is considered a Recyclable Material and is being Recovered by the Contractor on or after the Commencement Date of this Agreement is no longer considered a Recyclable Material. Contractor and City shall meet and discuss the extent to which the Facility Diversion Standard should be adjusted to reflect the removal of that material from the Recyclable Material stream of the Facility. In the event the Parties cannot reach agreement on the required change in the Facility Diversion Standard the Parties shall utilize the dispute resolution procedures set forth in Section 15.20 of this Agreement.



## **4.6.2 City Curbside Program Recyclables (CCPR) Diversion Standard**

Beginning with Contract Year 2017 and annually thereafter during the Term of this Agreement, Contractor shall meet a minimum CCPR Diversion Standard of eighty eight percent (88%) by weight of all Recyclable Materials included in the City Curbside Program Recyclables program delivered to the Facility under the terms of this Agreement. Compliance with this CCPR Diversion standard shall be determined using the results of the CCPR characterization studies as provided in Section 4.6.2.1 and Processing Diversion studies as provided in Section 4.6.2.2 and the calculations as provided in Section 4.6.2.3.

### **4.6.2.1 CCPR Characterization Sample Studies.**

Contractor shall be responsible for having CCPR characterization sample studies designed and performed in accordance with this Section to determine by weight the percentage of City Curbside Program Recyclables delivered to the Facility that are Recyclable Materials. The CCPR characterization sample studies shall be conducted in accordance with the sampling plan developed by the third party contractor as discussed herein. The average of the results of CCPR characterization sample studies conducted in Contract Year 2017 shall be used to calculate compliance with the CCPR Diversion Standard in that Contract Year. The CCPR characterization sample studies shall be performed by the Contractor but shall be designed by a qualified third party contractor subject to City's approval, which shall not be unreasonably withheld. The studies shall be conducted at the Facility and shall be of sufficient scope to meet industry practices and standards. The study methodology proposed by the third party contractor shall be subject to City's approval, which shall not be unreasonably withheld. Contractor shall provide full access to the conduct of the CCPR characterization sample studies, and all data and products of the studies, to City and its representatives.

During Contract Year 2017, Contractor shall perform the CCPR characterization sample studies under the direct supervision of the third party contractor who designed the study methodology. Thereafter Contractor may perform the CCPR sample studies without supervision but shall strictly follow the methodology developed by the third part contractor. However, the City may at its sole discretion require the Contractor to have annual CCPR characterization sample studies supervised by an independent contractor once every five (5) Contract Years or in any Contract Year following a Contract Year when the result of the CCPR characterization sample studies increase or decrease by more than +/- three (3) percentage points. For example if the calculated percentage of Recyclable Materials included in the City Curbside Program Recyclables delivered to the Facility increased from twenty seven percent (27%) to thirty one (31%) percent in one Contract Year the City could require that the CCPR characterization sample studies for the next Contract Year be performed under the supervision of a qualified third party contractor subject to City's approval, which shall not be unreasonably withheld.

### **4.6.2.2 Processing Diversion Studies.**

Contractor shall be responsible for having Processing Diversion studies designed and performed in accordance with this Section to determine by weight what percentage of City Curbside Program Recyclables delivered to the Facility are Diverted through Processing. Processing Diversion studies shall be conducted two (2) times in Contract Year 2017 and twice per Contract Year thereafter. The average of the results of the two (2) Processing Diversion studies conducted in a Contract Year shall be used to calculate compliance with the CCPR Diversion Standard in that Contract Year. Processing Diversion studies shall be performed by the Contractor but shall be designed by a qualified third party contractor subject to City's approval, which shall not be unreasonably withheld. The Processing Diversion studies shall be conducted at the Facility and shall be of sufficient scope to meet industry practices and standards. The studies shall use samples of material that consist exclusively of Recyclable Materials delivered to the Facility as part of the City Curbside Program; use samples that are representative of all

Recyclable Materials delivered to the Facility as part of the City Curbside Program; replicate Contractor's normal operating conditions, including but not limited to the number of sorters and other staff, Processing equipment, Processing equipment speed, material depth on the Processing line, material moisture content, and re-processing of Residue, as verified by the third party contractor. The study methodology proposed by the third party contractor shall be subject to City's approval, which shall not be unreasonably withheld. Contractor shall provide full access to the conduct of the Processing Diversion studies, and all data and products of the studies, to City or its representatives. During Contract Year 2017, Contractor shall perform the Processing Diversion studies under the direct supervision of the third party contractor who designed the study methodology. Thereafter Contractor may perform the Processing Diversion studies without supervision but shall strictly follow the methodology developed by the third part contractor. However, the City may at its sole discretion require the Contractor to have the annual Processing Diversion studies supervised by an independent contractor once every five (5) Contract Years or in any Contract Year following a Contract Year when the result of the studies increase or decrease by more than +/- three (3) percentage points. For example, if the calculated percentage by weight of the City Curbside Program Recyclables delivered to the Facility that are Diverted through Processing increased from sixty seven percent (67%) to seventy one percent (71%) in one Contract Year the City could require that the Processing Diversion studies for the next Contract Year be performed under the supervision of a qualified third party contractor subject to City's approval, which shall not be unreasonably withheld.

#### 4.6.2.3 Calculation of Compliance with CCPR Diversion Standard.

The Parties agree to measure Contractor's compliance with the CCPR Diversion Standard in the following manner:

"A" is the weight of all City Curbside Program Recyclables delivered to the Facility under the terms of this Agreement as reported by Contractor as set forth in Article 12;

"B" is the average percentage of City Curbside Program Recyclables delivered to the Facility under the terms of this Agreement that are: Recyclable Materials that Contractor can Divert as determined by the CCPR characterization sample studies set forth in Section 4.6.2.1, multiplied by "A";

"C" is the average percentage of City Curbside Program Recyclables delivered to the Facility under the terms of this Agreement that are Diverted through Processing, as determined by the Processing Diversion studies set forth in Section 4.6.2.2 multiplied by "A";

The calculated annual CCPR Diversion percentage is "C" divided by "B" (C/B)

To determine compliance with Section 4.6.2, the calculated annual CCPR Diversion percentage is compared to the CCPR Diversion standard of eighty eight percent (88%).

An example of this calculation is provided in Exhibit 3.

## 4.7 Facility Ownership and Contractor Operating Responsibilities

Contractor owns the Facility including all structures, equipment, and other features, and is solely responsible for incurring such capital and operating costs as are necessary to meet Contractor's Obligations.

Contractor shall maintain the Facility in good working order and repair, including landscape, building and equipment maintenance and repair, cleaning and painting the Facility, and providing litter control,





Contractor shall schedule repair and maintenance activities at times other than the Facility operating hours specified in Section 4.2 above in such a manner that Contractor can fulfill Contractor's Obligations. In no event shall failure to provide adequate and sufficient repair, maintenance, or Facility equipment or vehicle replacement excuse Contractor defaults described in Section 14.1.

#### **4.8 General Emergency Conditions and Response Plan**

Contractor shall prepare an emergency response plan to be followed in the event of an emergency, such as a spill, injury, earthquake, or issues with known or unknown types of Unpermitted Waste. The plan shall meet all federal, State and City requirements and be made available for review by such agencies upon request.

At the request of the City, Contractor shall provide emergency services to the extent it is capable of providing such services in the event of major accidents, disruptions, or natural calamities. Contractor shall provide emergency services in accordance with this Section 4.8 within twenty-four (24) hours of Notification by the City or as soon thereafter as is reasonably practical in light of the circumstances. Provision of emergency services that exceed Contractor's Obligations shall be compensated through an extraordinary adjustment in accordance with Section 11.5.

#### **4.9 Nuisances**

##### **4.9.1 Compliance with Permits**

Contractor shall maintain the Facility in a neat and orderly condition, unfavorable to rodents, insects, and birds, including cleanup of litter and debris on site and along roads near the Facility in accordance with its Permits and Applicable Law.

##### **4.10 Contractor Management**

Contractor will provide City Notice at least thirty (30) calendar days after a change in management personnel responsible for ensuring complete and timely performance of Agreement services (such as a change in the Facility manager, operations/safety manager, or Contractor's regional manager). The Notice shall identify the name of the new manager, commencement date of the assignment, telephone and e-mail contact information for such Person, title, description of responsibilities, and the individual's professional qualifications.

Contractor shall provide City with a twenty-four (24) hour emergency number to the Contractor's manager of this Agreement and such number shall connect the City to the Person, not to a voicemail system.

##### **4.11 Customer and Visitor Education**

###### **4.11.1 Facility Tours**

As a result of Contractor's outreach to the community and upon request of the City and reasonable Notice (no less than thirty (30) calendar days unless otherwise agreed by Contractor), Contractor shall deliver visitor presentations on source reduction, recycling and Mixed Municipal Waste management and provide tours of the Facility. Upon request of the City no less than thirty (30) calendar days in advance, Contractor shall permit the City to conduct presentations and tours of the Facility.



#### **4.11.2 Visitor Education Center**

Contractor shall provide and operate a designated public visitor education center at the Facility where visitors can convene to learn about and view Facility operations which shall include appropriate and current equipment (e.g., laptop computer, and an audio/ visual system) The City shall have access to the visitor education center at all times during normal operating hours as set forth in Section 4.2 for use by the City.

#### **4.11.3 Public Education Efforts and Materials**

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of AB 341 and AB 939 and will conduct its own outreach to the community and reasonably cooperate with City in any reasonable education efforts. Contractor shall notify Customers through its Customer billing and through contact with Resident and Non-Resident Self-Haulers of Facility Gate Rates and Per Item Rates, methods of limiting contamination in loads, and other Facility procedures. City may instruct Contractor to place notices in all mailings and to pass out notices to Customers at the scale house, drop-off center and/or visitor education center. All public education materials shall be printed in English and Spanish.

### **4.12 Waste Generation/Characterization Studies**

#### **4.12.1 Periodic Studies**

Contractor acknowledges that in addition to those studies required under Section 4.6., City may need to periodically perform generation and characterization studies of Covered Materials delivered to the Facility by Customers to comply with the requirements of AB 341 and AB 939. Contractor agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Covered Materials delivered to the Facility by Customers and characterize Covered Materials generated, Disposed, transformed, Diverted or otherwise handled/Processed, by Customer and waste stream type. City has the right to request that Contractor will, at its sole expense, conduct characterization studies, up to once every three (3) years for five (5) consecutive work days, of Covered Materials delivered to the Facility by Customers and target loads selected by the City for sorting and weighing of agreed-upon material categories. Contractor shall provide City with results of waste volumes, weights, and characterization studies within fourteen (14) calendar days of completing such study. If City requests additional characterization studies in a particular year or for the characterization study to be performed for more than five (5) consecutive work days, the City shall pay for costs incurred by Contractor in excess of its regular operating costs.

#### **4.12.2 Methodology**

Prior to the study, the City and Contractor shall agree on the method of the waste characterization studies and the information to be reported by Contractor at the conclusion of the studies.

### **4.13 Equipment and Vehicles**

#### **4.13.1 General**

Contractor shall provide all equipment necessary to perform Recovery, Processing and transfer activities including stationary equipment and rolling stock, sufficient in number and capacity to perform safely and efficiently the work required by this Agreement and shall maintain such equipment in a reasonable

manner and in accordance with its Permits and all Applicable Laws.

#### **4.13.2 Equipment Down-Time Contingency Plan**

In anticipation of planned equipment down-time and emergency operation during equipment failure and/or power outages, Contractor shall maintain back-up equipment on-site in order to assure on-going operations, together with a standby generator to power the operation of all scales.

#### **4.14 Services and Performance Review**

Each Contract Year during the term of this Agreement, City may but is not required to conduct a "Services and Performance Review". Each Party shall bear its costs of participating in the review. The purpose of the Services and Performance Review is to provide for a discussion and review of opportunities to achieve an ever-improving Recycling system; and, to ensure services are being provided by Contractor with adequate quality, effectiveness, economy, and in full compliance with the terms of this Agreement. Topics for discussion and review at the Services and Performance Review may include, but are not limited to:

- (A) Services provided;
- (B) Feasibility of providing new services;
- (C) Application of new technologies;
- (D) Customer complaints;
- (E) Amendments to this Agreement;
- (F) Developments in the law and regulatory constraints; and
- (G) Contractor's compliance with terms and conditions of the Agreement.

City and Contractor may each select additional topics for discussion at any Services and Performance Review.

Thirty (30) calendar days after the end of each Contract Year, Contractor may submit a report to City identifying additional information it wishes to have considered.

As a result of its findings following any Services and Performance Review, City may request Contractor to provide expanded or new services within a reasonable time and City may direct or take corrective actions for any performance inadequacies. Should City require expanded or new services following a Services and Performance Review that are not identified as a remedy for Contractor's failure to perform Contractor's Obligations hereunder, the new or expanded services shall be subject to the provisions of Section 4.16.

#### **4.15 City Right of Purchase**

##### **4.15.1 City Right to Purchase Facility and Equipment**

The City shall have the first right, but not the duty, to purchase the Facility upon a request by Contractor for assignment of this Agreement as provided in Section 15.5, at its Fair Market Value as defined in this Section 4.15.



#### **4.15.2 Definition of Fair Market Value**

For the purposes of Section 4.15, “Fair Market Value” means the value which would be obtained for the Facility in an arm’s length transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller, under no compulsion to sell. In determining the Fair Market Value of the Facility the appraiser shall use methods appropriate for the appraisal of the Facility in accordance with generally accepted appraisal standards. Future net income from operations shall only include those related to the ownership and operation of the Facility and shall not include any net income associated with other business activities of the Contractor unrelated thereto.

#### **4.15.3 Determination of Fair Market Value**

Upon a request for assignment by the Contractor as provided in Section 15.5, the Parties shall meet and confer and if they shall agree on the Fair Market Value, and the City shall desire to exercise its right to purchase hereunder, the City shall execute a binding purchase contract containing mutually agreeable terms for the payment of an amount equal to the agreed upon Fair Market Value. However, the closing of the purchase by the City shall in no case occur later than ninety (90) calendar days of the Notice by the Contractor of its intent to assign the Agreement or upon the final determination of Fair Market Value as provided in this Section 4.15, whichever is later.

#### **4.15.4 Disagreement as to Fair Market Value**

If the City and the Contractor are unable to agree on the Fair Market Value of the Facility within ninety (90) calendar days of the request by Contractor for assignment, then the Fair Market Value shall be determined in accordance with this Section 4.15.4 by dual appraisal. The appraisals shall be made by two (2) independent appraisers who shall be qualified, nationally recognized appraisers of industrial property including, without limitation, solid waste and recycling facilities similar to the Facility, one (1) of whom shall be chosen by the City and one (1) by the Contractor. If the two (2) appraisers come to two different conclusions as to Fair Market Value but the difference between the two conclusions as to Fair Market Value are ten percent (10%) or less of the highest of the two, then the Fair Market Value shall be determined by adding the two amounts determined as Fair Market Value by the appraisers and dividing by two. If the difference in the Fair Market Values determined by the two (2) appraisers is over ten percent (10%), then the two (2) appraisers shall choose a third appraiser whose determination as to Fair Market Value shall be conclusive thereof. If either Party shall fail to appoint an appraiser within ten (10) days of the written Notice by either of its intent to determine Fair Market Value pursuant to this Section 4.15.4, then the conclusion of the appraiser appointed in a timely manner shall determine the Fair Market Value. The cost of each Party’s appraiser shall be paid by the Party. The cost of a third appraiser retained pursuant to this Section shall be shared equally by the City and the Contractor.

### **4.16 City and Contractor’s Right to Request Changes**

#### **4.16.1 General**

The City or Contractor may request changes in Contractor operations, including, but not limited to the following: use different designated facilities (e.g., change in Approved Disposal Site, Approved Organics Processing Site, or Approved Recyclables Processing Site), perform additional services (including implementation of new Diversion programs such as designation of additional materials for Processing and Recovery, implementation of conversion technologies, etc.) or modify the manner in which it performs existing services (e.g., increased Diversion Standards, etc.). The Parties shall negotiate in good faith, terms, conditions and Contractor’s compensation for such changes if such changes result in an



increase in Contractor's costs. Contractor shall not be required to agree to any such request unless it is compensated fairly for such increased costs plus a reasonable profit thereon.

If the Parties fail to reach agreement on a change proposed by the City after sixty (60) days from the receipt of the proposal from the Contractor as set forth in Section 4.16.2, the City may submit the matter to binding determination by an independent expert. If the Parties fail to reach agreement on a change proposed by the Contractor after sixty (60) days from the receipt of the proposal by the City, the proposal is deemed rejected, unless the change is the result of a Change in Law and then the proposal shall be submitted to binding determination by an independent expert.

The independent expert shall have at least five (5) years experience with solid waste facilities and operations of the type under dispute and shall not have worked for either Party for a period of five (5) years of the referral of the dispute unless both Parties agree to the selection of that independent expert. If the Parties cannot agree on an independent expert, each Party shall select an independent expert and those independent experts shall select a third independent expert.

The determination of the independent expert as described in this Section shall be based on whether or not the proposal developed by the Contractor will reasonably achieve the objectives of the change in Contractor's operations and whether the compensation proposed is reasonable in allowing Contractor to recover increased costs and a reasonable profit.

#### **4.16.2 Procedure for Making Changes in Scope**

Contractor shall present, within sixty (60) calendar days of the City's written request, a written proposal to implement the requested change in service, or if Contractor's request, the proposal shall accompany the request. Contractor shall not be compensated for the proposal preparation costs or costs incurred during the negotiation of its proposal for the change in scope of such services. At a minimum, the proposal shall contain a complete description of the following:

- Methodology to be employed;
- Equipment to be utilized;
- Labor requirements (number of employees by classification);
- Type(s) of material to be Recovered and Processed;
- Provisions for program publicity/education/marketing;
- Implementation timeline;
- Compensation; and
- Three-year projection of the financial results of the program's operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

#### **4.16.3 Implementation of New Services**

The Contractor shall implement the agreed-upon new services, modification to existing service, or change in the designated facility(ies) in a timely, smooth, and seamless manner, to the greatest extent possible, such that Customers do not experience disruption in Facility operations.

#### **4.16.4 Modified Permit Conditions Based on Tonnage.**

The Parties understand that the Facility's Permits with the County will require major road construction



activities at the time the Facility begins to accept one thousand (1,000) Tons per day or more. Contractor shall be compensated for the reasonable cost of such construction, without any consideration of profit, through an increase in the Gate Rates or such other methodology as may be agreed to between the Parties.

#### **4.17 Compost Giveaway Program**

Contractor will provide compost and otherwise participate with the City in a compost giveaway program event held by the Contractor three (3) times per Contract Year, in the spring, summer and fall, which will allow residents of the City to receive compost at each event without charge, subject to availability. The details of each program, including the maximum amount of compost to be provided by the Contractor will be determined between the City and the Contractor.

## **ARTICLE TRANSFER STATION**

**5**

### **5.1 General**

Contractor shall operate the transfer station in a safe and efficient manner. Contractor's services shall include, but not be limited to, accepting Covered Material; screening and removing Unpermitted Waste; managing traffic flow of vehicles entering and exiting the transfer station; managing Customer unloading operations; providing and operating equipment required for handling Covered Material on the transfer station floor and for loading Mixed Municipal Waste and Residue into transfer trailers; providing Customer service support to Customers in the self-haul unloading area and in the main tipping floor area; and ensuring traffic safety and personnel safety of equipment operators, floor sorters, traffic directors, and Customers. In addition, Contractor shall use Reasonable Business Efforts to Recover Recyclable Materials, and Organic Materials through floor sorting efforts and through selection of targeted loads of Covered Material for Recovery and Processing in the MRF.

### **5.2 Transfer Station Receiving Hours**

Contractor shall accept Covered Material delivered by Customers at hours consistent with its Permits and the needs of the City's Collection Franchisee. Hours of operation are 8:00 a.m. to 4:00 p.m. Monday through Saturday except for Facility Holidays. The Contractor shall give reasonable Notice to the City and the public of any change in hours from those in effect at the Commencement Date of this Agreement. The Contractor shall not change its days of operations, except with the advanced written approval of the City. Contractor agrees that in the event of a change in Collection Franchisee, Contractor and the new collection contractor shall meet and confer to determine open hours that are mutually acceptable.

### **5.3 Acceptance of Covered Material**

#### **5.3.1 Acceptance**

Contractor shall accept at the transfer station, Covered Material delivered by Customers during Facility operating hours, subject to rejection rights in Section 5.3.2. However, nothing in this Agreement shall be construed to mean that the City guarantees to deliver or cause to be delivered any minimum amount of Covered Material.

Contractor shall not discriminate in the use of the Facility in accordance with local, State or Federal law



regarding discrimination.

At Contractor's expense, those items which have chlorinated fluoro-carbons ("CFCs") left intact shall be set aside, and Contractor shall then be responsible for having CFCs removed from used appliances if the appliances are being marketed for their scrap value. All handling shall be done in accordance with Permits and Applicable Law.

### **5.3.2 Rejection**

Notwithstanding the foregoing Section 5.3.1, the Contractor shall not knowingly accept Unpermitted Waste at the Facility. Contractor shall reject any Unpermitted Waste discovered in vehicles or during tipping thereof and require that all Persons remove such Unpermitted Waste from their vehicle and from the Facility. If the Contractor reasonably determines that it is impracticable to remove such items, then the Contractor may deem the entire load to comprise Unpermitted Waste and shall have the right to refuse to accept the entire load.

Contractor may deny service for the following reasons:

- (A) Delivery at times other than Facility operating hours and Household Hazardous Waste and E-Waste operating hours, as the case may be, or at any other mutually agreed upon times;
- (B) Delivery in excess of an amount equal to the Permitted daily Tonnage for the Facility;
- (C) Facility is partially or completely closed due to Uncontrollable Circumstances;
- (D) The suspicion of the presence of Unpermitted Waste in the load;
- (E) In the reasonable judgment of the Contractor, providing service to such Customer would result in a risk of loss or liability to the Contractor;
- (F) Such Customer fails to comply with Applicable Law or the rules and regulations imposed by the Contractor; or
- (G) Such Customer has previously delivered, or attempted to deliver, Unpermitted Waste to the Facility.

The Contractor shall notify the City if Contractor refuses to provide service to a Customer within twenty-four (24) hours of the incident and shall specify the reason(s) for such refusal. If the Contractor wrongfully rejects Covered Material delivered in accordance with this Section 5.3.2, it shall pay damages in accordance with Section 14.6.

### **5.3.3 Inadvertently Accepted Unpermitted Waste**

If the Contractor inadvertently receives delivery of any Unpermitted Waste, it shall classify, treat and/or transport or arrange for the transportation of such Unpermitted Waste from the Facility to a recycling, Processing, or Disposal site as appropriate in accordance with Applicable Law, as necessary. Neither the Contractor nor the City shall tolerate or knowingly permit the delivery of Unpermitted Waste to the Facility or the storage of Unpermitted Waste at the Facility.

The Contractor shall pay all costs and expenses incurred in the handling, transportation and Disposal incurred by third parties of such Unpermitted Waste. The Contractor shall use its best efforts to identify any Person responsible for delivery to or abandonment at the Facility of any Unpermitted Waste and shall use its Reasonable Business Efforts to require such Person to bear all costs and liabilities associated



with the handling of its Unpermitted Waste. Contractor shall nevertheless pay such costs in the event it cannot determine the Person so responsible in amounts up to ten thousand dollars (\$10,000.00) per Contract Year during the term of this Agreement. In the event that such costs exceed this level in any given Contract Year and such costs do not result from the Contractor's negligence or failure to inspect loads and record the identity of Customers as required by this Agreement, Contractor and City shall meet and confer to determine a fair and reasonable allocation of such costs.

The City and the Contractor shall take all reasonable steps necessary to seek enforcement of Applicable Law regarding such delivery.

#### **5.4 Customer Comments**

Contractor shall keep a record of comments made and concerns raised by Facility Customers and use Reasonable Business Efforts to address such comments and concerns. These records shall be retained and made available to City in accordance with Article 12.

#### **5.5 Vehicle Turnaround**

Contractor shall manage the scale house and vehicle receiving process to ensure that vehicles delivering Covered Material do not queue on the street. Contractor shall make Reasonable Business Efforts to ensure that Resident and Non-Resident Self-Haulers are able to unload and depart within thirty (30) minutes of entering the Facility property.

#### **5.6 Transfer of Covered Material and Residue**

Contractor shall transfer into transfer trucks (i) Mixed Municipal Waste from the tipping floor of the Transfer Station (which is not Recovered through floor sorting operations or moved to the MRF for Recovery and Processing); (ii) Residue from the MRF; and (iii) Organic Materials. Contractor's loading operation shall involve the use of truck scales to accurately measure the weight of the outgoing transfer vehicles as provided in Section 4.3.

## **ARTICLE MRF OPERATIONS**

**6**

### **6.1 Acceptance of Recovered Materials**

Contractor shall accept delivery of Recyclable Materials and Organic Materials from Customers during the Facility operating hours. Contractor will accept and Process Recyclable Materials, and will segregate, and remove contamination from Organic Materials as necessary prior to transport to the Approved Processing Facility. Contractor's Recovery and Processing operations are intended to result in Recovery of Recyclable Materials and Organic Materials to achieve or exceed the Diversion Standards specified in Section 4.6.

In the event loads of Recyclable Material are regularly delivered to the Facility that contain more than thirty percent (30%) Mixed Municipal Waste or other material which is not Recyclable Material, then the Parties shall meet and confer on a plan to reduce such contamination. During any period that the Contractor and the Collection Franchisee are related entities, sharing a fifty percent (50%) or more overlapping ownership interest, the Contractor shall cause the Collection Franchisee to attend this meeting. If no such plan to reduce the contamination is feasible or desired by the City, the Parties shall agree upon a modification to the Gate Rates so as to allow the Contractor to recover its net additional





costs.

## **6.2 Approved Recyclables Processing Site(s)**

Unless and until City otherwise approves, as provided in this Section, the Approved Recyclables Processing Site(s) shall be the Tracy Material Recovery Facility and Transfer Station.

In addition, Contractor may indicate its desire to use additional lawful sites for Recyclable Materials Processing by Notice to the City for reasons including, but not limited to, increasing the net revenues from Processing and/or shortening the transportation distance. The City shall have the right, in its sole discretion, to approve the use of additional Recyclable Materials Processing sites, and upon the City's approval thereof, such approved sites shall be considered an Approved Recyclables Processing Site; provided, however, that if Contractor requests City's approval to use an additional Recyclables Processing Site as a result of a permanent unavailability of a Approved Recyclables Processing Site, then the City's approval shall be exercised in good faith and not unreasonably withheld.

## **6.3 Processing and Marketing of Recovered Materials**

Contractor will Recover, at a minimum, Organic Materials and Recyclable Materials in accordance with standard recycling industry practices, including sorting and segregation of paper and metal by type and segregation of glass, plastics, and other commonly Recovered Materials. Contractor shall also Recover ferrous and non-ferrous scrap metal, rigid plastics, LDPE film plastic, plastic toys, and mattresses to the extent Contractor can market the Recovered Materials.

Contractor shall Process all Recovered Materials for marketing pursuant to Article 7. The City will not reimburse Contractor for any related marketing or other costs.

## **6.4 Disposal of Recyclable and Organic Materials Prohibited**

Recovered Materials, including that rejected by purchasers, may not be Disposed of in lieu of recycling or composting of such material, without the express written approval of the City. Disposal of Recovered Materials without prior City approval is subject to payment of damages to the extent provided in Section 14.6, and if repeated Contractor may be in default as provided in Section 14.1 unless otherwise excused by the provisions hereof. In the event that a significant shift in market conditions prevents Contractor from marketing such materials, City and Contractor shall meet and confer to identify possible alternatives to Disposal.

# **ARTICLE 7 MARKETING**

## **7.1 Marketing Obligations**

Contractor shall market Recovered Materials and use Reasonable Business Efforts to operate the Facility for Recovery and Processing of additional materials as new recycling markets, processes and technologies develop. Contractor's Obligations shall include, but not be limited to:

- (A) Storage: storing all Recovered Materials on-site or indoors at an off-site location to protect against theft, deterioration, contamination or other loss or damage.
- (B) Insurance: insuring all Recovered Materials on-site, at an off-site storage location, and during shipment prior to transfer of title to purchasers thereof, against fire, theft and other casualty losses in accordance with Section 13.3.



- (C) Packaging and Transportation: properly Processing, consolidating, and/or packaging Recovered Materials in accordance with standard practice in the recycling industry, and arranging for transportation and delivery to purchasers unless the terms of sale require the purchaser to arrange for transportation and delivery.
- (D) Sales: arranging for the sale of Recovered Materials at competitive market prices, foreign or domestic.
  - (i) Contractor shall sell to local markets whenever commercially possible.
  - (ii) Contractor shall exert Reasonable Business Efforts to sell Recovered Materials in accordance with this Agreement and to maximize purchase prices and assure stable markets.
  - (iii) To the extent practicable, Contractor shall obtain a certification of end use from the purchaser of Recovered Materials establishing that the Recovered Materials have been, in fact, recycled, re-used or otherwise Diverted from Disposal.
- (E) Weighing: delivering Recovered Materials to the scale house for weighing during Facility operating hours prior to shipment and by the Contractor at other times.
- (F) Maintaining Records: maintaining complete, accurate and detailed records in accordance with Article 12.

## **ARTICLE DISPOSAL AND ORGANICS PROCESSING**

**8**

### **8.1 Disposal of Mixed Municipal Waste and Residue**

In accordance with the County Agreement, Contractor shall transport to and Dispose of all Mixed Municipal Waste received at the Facility, which is not Recovered and Processed, and Residue from the Facility at the Approved Disposal Site(s) pursuant to Section 8.1.1. If Contractor delivers materials to a facility other than the Approved Disposal Site(s) other than as provided herein, the City may assess liquidated damages as specified in Section 14.6.

#### **8.1.1 Approved Disposal Site(s)**

Unless and until City otherwise approves a change, the Approved Disposal Sites shall be the County of San Joaquin Foothill Landfill. City reserves the right to change the Approved Disposal Site(s) at any time during the term of the Agreement, pursuant to the County Agreement, and such change shall be treated as a City-directed change pursuant to Section 4.16.

In addition, Contractor may indicate its desire to use additional lawful sites for Disposal by Notice to the City for reasons including, but not limited to, reducing the tipping fees due and/or shortening the transportation distance. The City shall have the right, in its sole discretion, to approve the use of additional Disposal sites, and upon the City's approval thereof, such approved Disposal sites shall be considered an Approved Disposal Site; provided, however, that if Contractor requests City's approval to use an additional Disposal site as a result of a permanent unavailability of an Approved Disposal Site, then the City's approval shall be exercised in good faith and not unreasonably withheld.

#### **8.1.2 Voluntary Use of Approved Disposal Site(s)**

The Contractor has entered into the County Agreement wherein the Contractor agrees to use the



Approved Disposal Site(s) which, as of the Commencement Date is the Foothill Landfill owned and operated by the County of San Joaquin for the purposes of Disposing of Mixed Municipal Waste and Residue from the performance of Contractor Obligations in the amounts required by the existing agreement(s) between the Contractor, City and County. 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.

### **8.1.3 Alternative Disposal Site(s)**

City may in its sole discretion, approve and designate an alternative Disposal site for use by Contractor in the event of an emergency or other conditions under which the Approved Disposal Site is unavailable for Disposal. In addition, Contractor may use such alternative Disposal site without approval or designation in the event of an emergency or other condition under which the Approved Disposal Site is unavailable for Disposal. In such case Contractor shall not be required to indemnify City against all claims resulting from Disposal at such site. However, should Contractor use a Disposal site not authorized by the City, Contractor shall indemnify City against all claims resulting from Disposal at such site without City approval.

## **8.2 Processing of Organic Materials**

### **8.2.1 Acceptance of Organic Materials**

Contractor shall accept delivery of Organic Materials from Customers during the Facility operating hours. Contractor will accept and Process Organic Materials, and will segregate, and remove contamination as necessary prior to transport to the Approved Processing Facility. Contractor's Recovery and Processing operations are intended to result in Recovery of Organic Materials to assist in the achievement of the Facility Diversion Standard specified in Section 4.6.

In the event loads of Organic Materials are regularly delivered to the Facility that contain more than fifteen percent (15%) Mixed Municipal Waste or other material which is not Organic Material, then the Parties shall meet and confer on a plan to reduce such contamination. During any period that the Contractor and the Collection Franchisee are related entities, sharing a fifty percent (50%) or more overlapping ownership interest the Contractor shall cause the Collection Franchisee to attend this meeting. If no such plan to reduce the contamination is feasible or desired by the City, The Parties shall agree upon a modification to the Gate Rates so as to allow the Contractor to recover its net additional costs.

### **8.2.2 Approved Organics Processing Site(s)**

Contractor shall be responsible for securing and paying for Processing services at the Approved Organics Processing Site, which is the Processing facility for all Organic Materials received at the Facility over the term of the Agreement. If Contractor delivers Organic Materials to a facility other than the Approved Organics Processing Site, the City may assess liquidated damages specified in Section 14.6 unless otherwise excused by the provisions hereof.

### **8.2.3 Change in Approved Organics Processing Site(s)**

- (A) Emergency or Sudden Closure. If Contractor is unable to use the Approved Organics Processing Site(s) due to an emergency, Uncontrollable Circumstance or sudden unforeseen closure of the Approved Organics Processing Site(s), Contractor may use an alternative Processing site provided that the Contractor provides verbal and written Notices to the City and receives



written approval from the City at least twenty-four (24) hours prior to the use of an alternative Processing site. The Contractor's Notice shall include a description of the reasons that use of the Approved Organics Processing Site is not feasible and the period of time Contractor proposes to use the alternative Processing site. Contractor shall not be compensated for any increased transportation and Processing costs and shall guarantee the then-current Gate Rates unless its inability to use the Approved Organics Processing site(s) occurs due to one (1) or more Uncontrollable Circumstances. In such case, Contractor may request a special review of Gate Rates pursuant to Section 11.5.

- (B) Contractor-Initiated. Contractor may change its selection of the Approved Organics Processing Site(s) following City's written approval, but Contractor will bear any increased transportation and Processing costs associated with a Contractor-initiated change in the Approved Organics Processing Site(s). In such case, Contractor shall guarantee the same Gate Rates. If Contractor elects to use a Processing site(s) that is different than the Processing site(s) approved by the City, it shall request written approval from the City sixty (60) calendar days prior to use of the site and obtain the City's written approval no later than ten (10) calendar days prior to use of the site.

#### **8.2.4 Transportation**

Contractor is responsible for transporting Organic Materials to the Approved Organics Processing Site.

## **ARTICLE PERSONNEL**

**9**

### **9.1 Personnel Requirements**

- (A) Qualified Staff. The Contractor shall engage and train qualified and competent sorters, drivers, mechanical, supervisory, clerical, maintenance, operations, management, and other personnel in numbers necessary and sufficient to perform Contractor Obligations and to provide the services required by this Agreement in a satisfactory, safe, economical, and efficient manner. Contractor shall ensure that all employees present a neat appearance and conduct themselves in a courteous manner.
- (B) Identifying Unpermitted Waste. Contractor shall establish and vigorously enforce an educational program that will train Contractor's employees in the identification of Unpermitted Waste. Contractor's employees shall not knowingly accept Unpermitted Waste or loads containing Unpermitted Waste
- (C) Customer Courtesy. Contractor shall train its employees in Customer courtesy and shall prohibit the use of loud or profane language. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures including, but not limited to, transfer, discipline, or termination.

### **9.2 Subcontractors**

City recognizes that Contractor may engage Subcontractors. Contractor shall seek approval for Subcontractors who provide thirty (30) days or more of service in one (1) calendar year and Public Works Director shall be authorized to review such request and recommend denial or approval of the request to the City Manager. Contractor will provide Notice to the City within ten (10) calendar days of engaging a Subcontractor, detailing the name of the Subcontractor, the nature of the service to be



performed, and the expected duration of the engagement. City reserves the right to request Contractor provide additional information substantiating the need for a given Subcontractor. As of the Commencement Date of the Agreement, Contractor is not using any Subcontractors.

All Subcontractors shall be licensed as required under Applicable Law to perform their subcontracted work and shall obtain and maintain a City business tax certificate if required by City ordinance. The Contractor shall remain liable for the full and complete performance of Contractor's Obligations hereunder including its Subcontractors' compliance with conditions such as, but not limited to: record keeping and reporting requirements as defined in Article 12; indemnification and insurance requirements in accordance with Article 13; and, the acquisition and maintenance of a valid City business tax certificate.

### **9.3 Fees and Gratuities**

Contractor shall not, nor shall it permit any agent, employee, or Subcontractors employed by it to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for services required under this Agreement, other than as specifically provided for under this Agreement.

### **9.4 Non-Discrimination**

In the performance of all work and services under this Agreement, Contractor shall not discriminate against any Person on the basis of such person's race, color, religion/religious creed, sex/gender, pregnancy, marital status, age, national origin/ancestry, physical and/or mental disability, medical condition, sexual orientation, gender identity, military or veteran status, or status in any other group protected by federal, State or local law. Contractor shall comply with all applicable local, State and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

## **ARTICLE BILLING AND CUSTOMER SERVICE**

**10**

### **10.1 Customer Billing**

Contractor is responsible for billing Gate Rates or other rates as appropriate to all Customers. Contractor shall be solely responsible for collection of payments due from all Customers including any bad debt.

### **10.2 Customer Service and Contractor Availability**

#### **10.2.1 General**

Contractor shall provide Customer service during regular service hours by telephone and in the office, including a responsible and qualified bilingual (English and Spanish speaking) representative, available by telephone and in the office from 7:00 a.m. to 5:00 p.m. Monday through Friday, and from 8:00 a.m. to 3:30 p.m. on Saturday. Contractor shall have a message machine or an answering service available outside of its regular telephone service hours. Calls received outside of regular telephone service hours shall be responded to on the next business day.

#### **10.2.2 Complaint Documentation**

All complaints shall be directed to Contractor. Daily logs of complaints shall be retained for a minimum of twenty-four (24) months. On a quarterly basis, Contractor shall submit copies of the daily complaint



log in accordance with Section 12.3.2.

Contractor shall log all complaints received by telephone, email and from its website and said log shall include the date and time the complaint was received as well as the name, address, and telephone number of the caller, a description of the complaint, the name of the employee recording the complaint, and the action taken by Contractor to respond to and remedy the complaint.

All written Customer complaints and inquiries shall be date-stamped when received and shall be initially responded to within one (1) work day of receipt. Contractor shall log the actions taken by Contractor to respond to and remedy the complaint.

All Customer service records and logs kept by Contractor shall be available to City upon request. City shall, at any time during regular office hours, have access to Contractor's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

### **10.2.3 Resolution of Customer Complaints**

Contractor shall make best efforts to resolve all complaints within ten (10) work days.

If Contractor is unable to resolve a complaint with a Customer, the City may, at its sole discretion, review the matter and suggest a resolution.

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

## **ARTICLE**

**11**

## **CONTRACTOR COMPENSATION AND GATE RATES**

### **11.1 General**

Contractor's compensation provided for in this Article 11 shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement.

The Gate Rates and Per Item Rates that the Contractor shall charge for the delivery of Covered Material to the Facility by the Collection Franchisee shall be determined in accordance with the procedures described in this Article. Contractor shall have the right to determine the tip fee, or other fees it charges Other Users for any material which may be accepted at the Facility under Applicable Law and the Facility's Permits, subject to the terms of this Agreement. City is in no way responsible for payment of Gate Rates or other fees of any kind from Other Users.

Other than as provided herein, if Contractor's actual costs of operation are more than the Gross Rate Revenues, Contractor shall not be compensated for the difference in actual costs and actual revenues from Gate Rates, Per Item Rates and other fees charged to the Customers. Other than as provided herein, if Contractor's actual costs are less than the actual revenues Contractor receives from Gate Rates, Per Item Rates and other fees, Contractor shall retain the difference between its actual costs and actual revenues. This is the only compensation due Contractor under this Agreement.



The City shall ratify Gate Rates that shall have been correctly calculated by Contractor and approved by City in accordance with this Agreement at a level and such times reasonably calculated to allow the City to pay the Gate Rates and other compensation which may be due the Contractor hereunder as they become due. The City's payment of Gate Rates and Per Item Rates to Contractor is in effect only to the extent City is authorized to collect monies under Tracy Municipal Code section 5.20.390 (City billing of customer solid waste rates)

## **11.2 Gate Rates for Contract Year One**

Initial Gate Rates for Collection Franchisee for Contract Year One from January 1, 2017 through December 31, 2017, shall not exceed the Gate Rates set forth in Exhibit 1.

## **11.3 Annual Gate Rate Adjustment Method and Schedule of Adjustments**

Beginning with Contract Year Two (January 1, 2018 through December 31, 2018) and for all subsequent Contract Years, the annual adjustment to the Gate Rates shall be based on the method of adjustment described in Exhibit 2 and shall be reviewed by the Public Works Director and approved by the City Manager.

## **11.4 Per Item Rate Adjustments**

Beginning with Contract Year One (January 1, 2017 through December 31, 2017) and for all subsequent Contract Years, the annual adjustment to the Per Item Rates shall be made by Contractor and provided to City in writing on or before December 15<sup>th</sup> of the preceding Contract Year. Therefore the Per Item Rates for Contract Year 1 shall be provided to the City by December 15, 2016.

## **11.5 Extraordinary Adjustments**

City or Contractor may request an "Extraordinary Adjustment" either as part of the annual Gate Rate adjustment or at any other time in accordance with this Section 11.5. If the Extraordinary Adjustment is requested as part of the annual Gate Rate adjustment, the increase or decrease in the Gate Rate approved for the next Contract Year attributable to the Extraordinary Adjustment shall be calculated retroactively from the date on which the Contractor's costs increase or decrease due to the event giving rise to the Extraordinary Adjustment.

### **11.5.1 Eligible Items**

The City and Contractor are entitled to seek a special review of Gate Rates at any time during the Contract Year should one (1) or more of the following events occur and, after considering offsetting effects of other events or trends on revenues or expenses, such event or events shall have the net effect of changing total operating costs or Gross Rate Revenues, or a combination thereof, which net effect totals two percent (2%) or more annually of the Gross Rate Revenues for the most-recently completed Contract Year. If such net effect is less than two percent (2%) annually of the Gross Rate Revenues for the most-recently completed Contract Year, such cost and/or revenue impact shall be considered at the time of the next annual Gate Rate adjustment.

- (A) Emergency Service. Provision of emergency services pursuant to Section 4.8.
- (B) Uncontrollable Circumstance. An event of Uncontrollable Circumstance, as defined herein.
- (C) Fees. Changes in regulatory, governmental, or other surcharge fees after the Commencement Date that: (1) were not reasonably known to the Contractor before the Commencement Date;



- (2) were not known in time to be included in the appropriate annual Gate Rate adjustment process for any Contract Year and, (3) the Contractor substantiates.
- (D) Disposal Cost Adjustment. Per-Ton Disposal cost increases at the City-contracted Approved Disposal Site(s) above those reflected in the Disposal cost determined during the annual Gate Rate adjustment process performed in accordance with Section 11.3.
- (E) Processing Cost Adjustment. If the City contracts directly with the Approved Recyclables Processing Site or the Approved Organics Processing Site operator(s), the following condition will be an eligible item: per Ton Processing cost increases at the Approved Recyclables Processing Site(s) and/or Approved Organics Processing Site(s) above those reflected in the Processing cost determined during the annual Gate Rate adjustment process performed in accordance with Section 11.3.
- (F) Material Change in Markets for Recovered Materials. If in any period of twelve (12) consecutive months during the Term of this Agreement, the Baseline Recyclable Per Ton Revenue received by Contractor shall decline by ten percent (10%) or more as compared to the Baseline Recyclable Per Ton Revenue received for the preceding period of twelve (12) consecutive months. Any adjustment to the Gate Rates made under this Section 11.5.1 (F) shall be reversed as part of the next annual Gate Rate adjustment process after such time as the Average Recyclable Per Ton Revenue returns to the level it was at prior to the decline that triggered an extraordinary adjustment under this Section. The percentage revenue threshold for a special review of rates described in this Subsection F shall be effective notwithstanding whether the dollar amount of such decline in revenue is equal to or greater than two percent (2%) of Gross Rate Revenues.
- (G) Decrease in Tonnage Levels. A decrease in the Tonnage of Covered Materials.
- (H) Change in Material Composition. A change in the composition of Covered Materials.
- (I) New Equipment. A change in Contractor's depreciation and interest expense for the purchase of new equipment or in order to make major renovations in the Facility whether due to the need for periodic replacement of equipment or for necessary renovations, required by Permit, an increase in volume of materials handled at the Facility, an Uncontrollable Circumstance, or a material change in the composition of Covered Materials. Notwithstanding the provisions of this Section 11.5.1, in the case of change in Contractor's depreciation and interest expense due to the purchase of new equipment or renovations, it shall be entitled to a special review of Gate Rates at any time during the Contract Year as otherwise provided herein upon the satisfaction of both of the following conditions: (i) the net effect of the increase in its depreciation and interest costs is equal to, or greater than one percent (1%) of Gross Rate Revenues and (ii) Contractor can show to the satisfaction of the City that the equipment purchase or renovation was unexpected and in spite of using Reasonable Business Efforts in planning for such items in general, the timing of the need for such specific purchase or renovations could not have been anticipated or that an opportunity for material cost savings in the purchase of equipment would be jeopardized if such purchase was delayed. In the event Contractor cannot meet both of the conditions set forth herein, the cost and/or revenue impact shall be considered at the time of the next annual Gate Rate adjustment.
- (J) Other Reasons Agreed Upon by Parties. For any other reason if agreed upon by the Contractor and City.



### **11.5.2 Ineligible Items**

A special review of Gate Rates may not be initiated for the following items and Contractor shall not be compensated for such items over the term of the Agreement.

- (A) Increased Operation Costs. Increases in the cost of Contractor Obligations in excess of the increases provided through the annual adjustment mechanism described in Exhibit 2 unless cost increases are demonstrated to be directly related to eligible items listed in Section 11.5.1 above.
- (B) Increased Transportation and Processing Costs. Increases in the cost of Organic Materials transportation or Processing that may be impacted by change in Processing site, unless such change is initiated by or at the direction of the City or due to an Uncontrollable Circumstance.
- (C) Contractor Error. Equipment failure or failure to accept Covered Materials due to Contractor error(s) in planning, failure to maintain proper Permits; regulatory actions against Contractor that prohibit or curtail Contractor Obligations; underestimation of Facility operating costs; other operating problems; and/or problems related to internal company operations of the Contractor, its Subcontractors, its vendors, or its agents.
- (D) Processing Cost Adjustment. If Contractor contracts directly with the Approved Recyclables Processing Site and/or Approved Organics Processing Site operator(s), the following condition will be an ineligible item: per Ton Processing cost increases at the Approved Recyclables Processing Site and/or Approved Organics Processing Site above those reflected in the Processing cost determined during the annual Gate Rate adjustment process performed in accordance with Section 11.3, subject only to Uncontrollable Circumstances, if applicable

### **11.5.3 Review of Costs**

If the Contractor or the City requests a special review of Gate Rates, the City, or its agent, shall have the right to review any or all financial and operating records of Contractor and related-party entities if related-party entities are involved in services provided by the Contractor as part of this Agreement.

The City may use and, if so, shall pay for the assistance of an independent third party consultant to perform a rate analysis or other required services.

### **11.5.4 Submittal of Request**

A request for an Extraordinary Adjustment shall be conducted as provided in this Section. Contractor is obligated to meet requirements of this Section whether process is City-initiated or Contractor-initiated.

- (A) The Party initiating an Extraordinary Adjustment shall Notice the other Party, citing the applicable provisions of this Article and providing a complete written summary of the reason for the Extraordinary Adjustment, and its impact on Contractor's Obligations and Gate Rates.
- (B) If a Notice of Extraordinary Adjustment is issued by the City, within thirty (30) calendar days of receiving the City's Notice, the Contractor shall prepare and submit a proposal in accordance with the proposal format specified in Section 11.5.4(D).
- (C) If a Notice of Extraordinary Adjustment is issued to City by the Contractor, the Contractor's Notice shall include a proposal in accordance with the proposal format specified in Section 11.5.4(D).
- (D) Proposal Format. For any proposal submitted under this Section, Contractor shall:



- (i) Describe the circumstance warranting an Extraordinary Adjustment.
  - (ii) Describe the impact of the circumstance under Extraordinary Adjustment on Contractor's compensation or Contractor's Obligations.
  - (iii) Submit work plan for implementing a change in Contractor's Obligations identifying physical changes to the Facility, changes in operating methods and labor needs, and implementation schedule.
  - (iv) Identify the capital and/or operating cost of modifying the Contractor's Obligations to support any requested change in Contractor compensation. The Contractor shall include detailed documentation supporting its cost proposal, including cost substantiation. Contractor covenants that it will not propose a cost in excess of the fair market price for such change in Contractor's Obligations, whether it implements such changes itself or through a Subcontractor.
  - (v) Propose a change in compensation, as necessary, as a change in the Gate Rate. Increased costs (or decreased costs) of Contractor in meeting Contractor's Obligations related to any adjustment in Gate Rates caused by one or more of the eligible items in Section 11.5.1 shall be apportioned to the City using a ratio equal to the Tonnage delivered by the City in the Contract Year preceding the occurrence of the eligible item(s) divided by the total Tonnage delivered to the Facility by all Customers for such Contract Year.
  - (vi) For the purposes of analyzing cost impacts of changes in scope, the Contractor's profit from operations shall be calculated using profit percentage of nine and nine tenths percent (9.9%) multiplied by the actual reasonable and necessary costs net of Disposal expenses and City fees specified in Article 3.
  - (vii) Provide draft language changes to the provisions of this Agreement, as Contractor deems appropriate and necessary to affect any change in Contractor's compensation or Contractor's Obligations.
- (E) Such proposal shall be deemed the Contractor's offer with regard to changes in Contractor's compensation, Contractor's Obligations, and/or change in scope pertaining to the circumstances under review, as appropriate, in accordance with the terms of such proposal, and shall be binding for one hundred and eighty (180) calendar days unless the request for Extraordinary Adjustment is withdrawn subject to Subsection 11.5.4.(F).
- (F) The Party that initiated the Extraordinary Adjustment may withdraw its Notice and its request for Extraordinary Adjustment at any time.

### **11.5.5 City Review**

The initiator of the request for an Extraordinary Adjustment shall bear the burden of justifying by substantial evidence its entitlement to any adjustment in Gate Rates under this Section 11.5. City shall review the proposal provided by Contractor as well as any other information it deems necessary to determine, what, if any adjustment is justified.

The City may use the assistance of an independent third party to review the proposal. Each Party shall be responsible for its cost of the Extraordinary Adjustment review. The City may request from the Contractor operating and business records reasonably required to verify the reasonableness and accuracy of the impacts associated with an Extraordinary Adjustment. Contractor shall fully cooperate with the City's request and provide City and its agent(s) copies of or access to Contractor's records.

If the City determines that the Contractor has not met its burden, Contractor may request a meeting with City staff and the Public Works Director at which time Contractor may produce additional evidence in support of its request for a special Gate Rate adjustment. Upon such request, City shall promptly arrange said meeting.

Based on evidence the Contractor submits and the City's review of the evidence and any other information it deems necessary, the City may recommend and the City Manager may grant some or all of the requested increase and approve adjusted Gate Rates or City Manager may deny all of the requested Gate Rate increase.

Any dispute regarding compliance with this Section or the validity of the grounds for Extraordinary Adjustment or the amount of any change in Gate Rates will be resolved through dispute resolution procedures set forth in Section 15.20.

### **11.5.6 Grant of Request**

An Extraordinary Adjustment may be approved at any time as set forth in Section 11.5.1. The City Manager may approve the Extraordinary Adjustment unless, in the City Manager's determination, the Extraordinary Adjustment must be considered for approval by the City Council, in which event City Council consideration of approval shall be required. City will issue a Notice to Contractor approving the Extraordinary Adjustment and documenting any change to Gate Rates. In the event any Extraordinary Adjustment results in changes to Contractor's Obligations, to the extent required, the changes shall be documented in the form of an amendment to this Agreement.

## **11.6 City Users are Most Favored Customers**

### **11.6.1 Most Favored Customer Conditions**

Contractor represents and warrants that Collection Franchisee is the largest Customer of the Facility and that the original contract for its use between the Parties was the major rationale for its construction and operation. Therefore, the Parties consider the City its most favored Customer and although Contractor may accept Covered Materials from Other Users of the Facility, the Parties acknowledge that the payments to the City required by Sections 3.2 and 3.3 hereof will be made by the Contractor to the City in consideration of its willingness to use the Facility and execute this Agreement. Contractor acknowledges and agrees that this most favored Customer representation and warranty is material.

### **11.6.2 Most Favored Customer**

The Contractor shall not sign an agreement with Other Franchised Users with a Gate Rate for Mixed Municipal Waste that is less than the net MMW Gate Rate that is, or will be, paid by the City pursuant to this Agreement at the time that the agreement with the Other Franchised User will become effective. The net MMW Gate Rate paid by the City shall be the then current MMW Gate Rate less per Ton City fees and, to the extent the additional Tonnage to be delivered to the Facility by the Other Franchised User shall require payment of the Tonnage Incentive Fee described in Section 3.2, the Tonnage Incentive Fee shall also be deducted in calculating the net MMW Gate Rate for the purposes of this Section.

### **11.6.3 Verification of Compliance**

Contractor shall by January 31, 2018 and annually thereafter during the term of this Agreement provide the City written verification and documentation (to the satisfaction of the City) that the then-current Gate Rates, (as adjusted in accordance with Section 11.6.2 herein) for the Collection Franchisee for



delivery of those materials listed in Exhibit 1 to this Agreement are equal to or lower than the comparative rates and tipping fees that the Contractor is then providing to Other Franchised Users, If one (1) or more of the then-current Gate Rates, as adjusted, for the Collection Franchisee is not equal to or lower than the comparative Gate Rates for Other Franchised Users, the Gate Rates for the Collection Franchisee shall be adjusted accordingly.

#### **11.6.4 Adjustment for Comparability**

If an adjustment to the Gate Rates is made to reflect comparative rates or tipping fees on a date other than January 1 of the regularly scheduled annual adjustment, the adjustment to the Gate Rates in the following annual adjustment period shall reflect the change in CPI-U that occurred between the date the Gate Rate(s) were adjusted to reflect the comparative rate or tipping fee and the date of the following annual adjustment.

### **11.7 City Payment to Contractor**

#### **11.7.1 Monthly Invoice by Contractor**

Beginning with the Commencement Date, Contractor shall produce a preliminary monthly invoice. City shall pay Contractor for services performed in accordance with this Agreement at the initial Gate Rates set forth in Exhibit 1, and as such Gate Rates may be adjusted pursuant to this Agreement. Such invoice shall be delivered to the City by mail and e-mail no later than the tenth (10<sup>th</sup>) day of the month following the month such services were rendered.

#### **11.7.2 Payments to Contractor**

City, as long as it is the collection agent, shall remit all payments required under this Section 11.7 on or before the thirtieth (30<sup>th</sup>) calendar day following receipt of Contractor's invoice. If any of the payments specified in this Section 11.7, not including any payments withheld per Section 11.7.4, are not paid on or before the thirtieth (30<sup>th</sup>) calendar day following receipt of Contractor's invoice, City shall pay to Contractor a late payment penalty in an amount equal to two percent (2%) of the amount owing for that month.

#### **11.7.3 Wire Transfers**

Unless requested otherwise by Contractor, City will make monthly invoice payments and/or additional payments electronically through the City's e-payables system to Contractor's bank account or accounts as designated by Contractor

#### **11.7.4 Withholding of Payment**

City may withhold from any payment otherwise due to Contractor such amount as is reasonably determined by City as the result of a material error in the calculation of the monthly invoice. In such cases, the City shall contact Contractor informing it of the error in the monthly invoice and, upon receipt of a correct invoice, shall pay the amount of the correct invoice in a timely manner.

Upon resolution by the Parties of any dispute as to the proper amount of the monthly invoice, City shall pay all withheld amounts which should not have been withheld within fifteen (15) calendar days of that resolution but may retain any withheld payments that reflect overpayment by the City. City shall not be liable for interest on any delayed or late payment.



Any disputes not resolved by the Parties within thirty (30) calendar days of the date on which payment to the Contractor was due shall be resolved in accordance with the dispute resolution procedures of Section 15.20. Upon final resolution, if the City shall have wrongfully withheld payment properly due the Contractor, it shall pay to the Contractor the amount wrongfully withheld within fifteen (15) calendar days of resolution.

## **ARTICLE 12** **RECORDS, REPORTS & INFORMATION REQUIREMENTS**

### **12.1 General**

Contractor shall maintain such accounting, statistical and other records related to operations and its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with Applicable Laws and to meet the reporting and solid waste and Recycling program management needs of City and other Customers.

### **12.2 Record Keeping Requirements**

#### **12.2.1 General**

During the Term of the Agreement, Contractor shall keep daily accurate and complete records of Contractor operations, as needed to complete reports and audits as required in Sections 12.3 and 12.4; and keep records in sufficient detail to allow the Contractor to calculate, and City to corroborate, the Gate Rates, any damages and other amounts hereunder and to determine compliance with the provisions hereof. Records shall be kept in electronic, magnetic or other media approved by the City and compatible with the City's system. Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up off site.

Contractor agrees that Contractor and Subcontractor records shall be provided or made available to City and its official representatives during normal business hours or within twenty-four (24) hours Notice. City may review or utilize any of the records described in this Section for any purpose whatsoever.

#### **12.2.2 Weight Records**

Contractor shall maintain at least the following records:

- (A) Delivery of Covered Material weighed at Scale house: the weight of Covered Material in the aggregate and by category to the extent delivered in segregated loads delivered by each Customer daily to the Facility and weighed at the scale house.
- (B) Delivery of Covered Material, Recyclable Household Hazardous Waste, and E-Waste not weighed at the Scale house: the volume, category and estimated weight of:
  - (i) Recyclable Household Hazardous Waste and E-Waste delivered daily to the Recyclable Household Hazardous Waste and E-Waste Area, and
  - (ii) Mixed Municipal Waste delivered daily by Resident and Non-Resident Self-Haulers to the



Facility in their vehicles which are not weighed at the scale house (including retention of video of license plates and time, reported jurisdictional origin, Tonnage as estimated, and date and time of delivery).

- (C) Transport of Recovered Materials; Transfer of Residue and Covered Material: the weight of Recovered Materials (including specifically the weight of all Recovered Materials Recovered and Processed, sold or otherwise Diverted from Disposal, and/or otherwise Disposed); Residue; transferred Covered Material; and any other materials leaving the Facility.
- (D) Third Party Invoices and Receipts: copies of the invoices or other receipts issued by third parties (e.g. brokers, purchasers or other takers of Recovered Materials) evidencing weight of Recovered Materials shipped from the Facility.
- (E) Vehicle Weights: gross and tare weight of each municipal and commercial vehicle (including vehicle ID number and date and time of delivery).

### **12.2.3 Cash/Billing Records**

Contractor shall maintain all invoices and receipts for all payments and other records generated by the Contractor related to Customer Billing and payments including, but not limited to the following:

- (A) any Gate Rate paid to Contractor in cash for delivery of Covered Material by Resident and Non-Resident Self-Haulers;
- (B) any other cash receipts; credit card payment transaction records; and,
- (C) all invoices issued to Customers with accounts and payments remitted.

### **12.2.4 Operations Records**

In addition to records supporting operational and maintenance reports, Contractor shall maintain traffic counts, and upon City request, the arrival and departure time of each vehicle, the amount of time vehicles were queued, amount of time for vehicles to cross scales at the scale house and unload materials on tipping floor and exit the Facility.

### **12.2.5 Marketing Records**

In addition to records supporting Marketing and Diversion reporting and amounts owed to the City, Contractor shall maintain at least the following records:

- (A) names, addresses, phone numbers of brokers and purchasers, including contacts;
- (B) date and terms of sale including type, grade, specification, and quantity of Recovered Materials sold sales prices;
- (C) unit and total sales prices for each sales transaction and total revenue from Recovered Materials;
- (D) contracts or other documents evidencing transfer of title;
- (E) Residue rates for secondary Processing activities; and,
- (F) any certifications of end use of Recovered Materials.

## 12.2.6 Financial Records

Contractor shall maintain financial records relating to Contractor Obligations pursuant to this Agreement separate and segregated from such records relating to its other operations.

## 12.3 Reporting Requirements

### 12.3.1 Report Formats, Submittal Schedule

Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by City. Contractor shall submit all reports in an electronic format approved by City, compatible with City's software/computers.

Monthly reports shall be submitted within forty-five (45) calendar days after the end of the report month except documentation supporting monthly Gate Fees due by City and payments by the Contractor shall be submitted with the monthly invoices and payments. Annual reports shall be submitted within ninety (90) calendar days after the end of the Contract Year, unless audited, in which case the audit reports shall be submitted by July 1. Failure to update and submit all required reports on time may result in assessment of liquidated damages as specified in Section 14.6. City may request additional information and report clarifications, which Contractor will provide within thirty (30) calendar days.

All reports shall be submitted to:

Public Works Director  
City of Tracy  
520 Tracy Boulevard  
Tracy, CA 95376

### 12.3.2 Reports

At a minimum, the reports shall include the following information:

- (A) Facility Tonnage. monthly report providing summarized monthly weight records with respect to the Facility, by incoming waste stream type (Mixed Municipal Waste and Organic Materials) and by Customer type.
- (B) Recyclable Household Hazardous Waste and E-Waste Tonnage. monthly report providing weight records with respect to the types of materials delivered to the Recyclable Household Hazardous Waste and E-Waste collection area listed separately by type of Customer and jurisdiction of origin.
- (C) Recovery Information.
  - (i) Monthly Tonnage summary of outbound Recovered Material by material type and Tons.
  - (ii) Calculation of compliance with the Facility Diversion Standard in accordance with Section 4.6.1. If the Facility Diversion Standard is not met on a quarterly basis, Contractor shall include a discussion of reasons why the Facility Diversion Standard was not met, it's proposed corrective action to meet such Facility Diversion Standard in the succeeding quarter, and projections for annual compliance.
  - (iii) Results of waste characterization studies, CCPR Characterization Sample Studies, and



Processing Diversion Studies.

- (iv) Calculation of compliance with the CCPR Diversion Standard in accordance with Section 4.6.2. If CCPR Diversion Standard is not met, Contractor shall include a discussion of reasons why the CCPR Diversion Standard was not met, and its proposed corrective action to meet such CCPR Diversion Standard in the succeeding quarter, and projections for annual compliance.
- (v) Materials sales statement showing type of material Diverted (available upon request).
- (D) Marketing and Diversion. based on delivery records, Contractor will use Reasonable Business Efforts to allocate specific Diversion percentages to the individual jurisdictions from which Customers deliver Covered Materials. City acknowledges that licensed commercial hauling companies delivering materials to the Facility may collect waste from multiple jurisdictions, and will cooperate with Contractor to develop a method or procedure for tracking and/or apportioning such waste by jurisdiction of origin.
- (E) Contaminated Load Rejections. monthly report on loads rejected as contaminated or discovered contaminated after acceptance.
- (F) Complaint Log. copy of daily logs of complaints required to be maintained by Section 10.2.2.
- (G) Appliance Vouchers. monthly submittal of Appliance Vouchers.

### **12.3.3 Annual Reports**

Contractor will submit to City an annual report including:

- (A) Annual audited financial statements and footnotes prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. Contractor shall select the firm to perform the work, subject to City having the right to reject one (1) firm selected by the Contractor, after which the Contractor shall have the right to select any firm to perform the audit. Contractor shall provide City with a copy of the audit on or before July 1<sup>st</sup> of each Contract Year following the Contract Year for which the audit was performed. City may observe such inventory and auditing procedures and confer with accountant conducting the audit. The Contractor shall pay the cost of any such audit.
- (B) Yearly totals of data required in Sections 12.3.2(A) through (C) and (F).
- (C) General information about the Contractor, including a list of officers and members of its board of directors.

City may reasonably request other information or reports.

## **12.4 Review of Tonnage and Payment of Fees**

### **12.4.1 Contractor's Review**

Upon request, but no more often than once per Contract Year, the City may request that a review be performed of Contractors reported Tonnage and payment of fees. City shall develop the scope of work





and select the firm to perform the work, subject to Contractor having the right to reject one (1) firm selected by the City, after which the City shall have the right to select any firm to perform the work. City and Contractor further agree that City shall not select a firm to perform the review if that firm has performed similar services for the City or the Contractor within the last five (5) years unless both Parties agree to the selection of that firm. The Parties shall each pay fifty percent (50%) of the cost of the review.

#### **12.4.2 Payments and Refunds**

If a review determines that Contractor has been overpaid by the City, Contractor shall refund the amount of the overpayment. If a review determines that Contractor has been underpaid by the City, City shall pay the amount of the underpayment. Unless otherwise agreed by the Parties, payments shall be due as follows:

- (A) One hundred thousand dollars (\$100,000) or less shall be due thirty (30) calendar days from the date of the completion of the review.
- (B) More than One hundred thousand dollars (\$100,000) shall be due ninety (90) calendar days from the date of the completion of the review.

#### **12.5 Reporting Adverse Information**

Contractor shall report to the City the occurrence of any notices of violation, communications or other material relating to an allegation of a violation of Applicable Law resulting from Contractor's performance of services pursuant to this Agreement, received by Contractor from, the United States or California Environmental Protection Agency, the California Department of Resources Recycling and Recovery (CalRecycle), the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court and shall provide copies of relevant information related thereto upon written request of the City. Such copies shall be submitted to City within fifteen (15) calendar days of receipt by Contractor, or sooner if reasonably apparent that to do so is materially relevant.

#### **12.6 Failure to Report**

The refusal or failure of Contractor to file any required reports, or to provide required information to City, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a condition of default of the Agreement as described in Section 14.1 and shall subject Contractor to all remedies which are available to the City under this Agreement or otherwise.

## **ARTICLE INDEMNIFICATION AND INSURANCE**

**13**

### **13.1 Indemnification**

#### **13.1.1 General**

Contractor shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel reasonably approved by the City), and hold harmless the City (or "Indemnitees") from and against any claims arising out of Contractor's performance or failure to comply with Contractor Obligations under this Agreement, except to the extent caused by the active negligence or willful misconduct of the City.



In this Section:

- “City” means the City, its officials, officers, agents, employees and volunteers;
- “Contractor” means the Contractor, its employees, agents and Subcontractors;
- “Claims” includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these, including claims related to hazardous substances as set forth in Section 13.1.4; and
- “Arising out of” includes “pertaining to” and “relating to”, or alleged to be arising out of.

### **13.1.2 Survival; No limitations**

The provisions of this Section: (a) survive completion of the services or the termination of this Agreement; and (b) are not limited by the provisions of Section 13.3 relating to insurance. City’s review, acceptance or approval of Contractor’s work or work product shall not affect, relieve or reduce Contractor’s indemnification or defense obligations.

### **13.1.3 Duty to Defend**

The duty to defend is a separate and distinct obligation from Contractor’s duty to indemnify. Contractor is obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel reasonably approved by the City immediately upon tender to Contractor of the Claim in any form or at any stage of an action or proceeding, whether or not the Claim is established. However a determination or admission of sole active negligence or sole willful misconduct by the City shall relieve Contractor from its separate and distinct obligation to defend the City. In the event that Contractor asserts that the Claim is caused in whole or in part by the sole active negligence or sole willful misconduct of the City or counsel notifies the Contractor that due to conflicts, it cannot represent both City and Contractor, the City may retain independent counsel, the reasonable costs of which shall be paid by Contractor. If a judgment is entered by a court of competent jurisdiction that the Claim is caused by the sole active negligence or sole willful misconduct of the City, Contractor may submit a claim to City and City shall reimburse Contractor for its reasonable attorneys’ fees and defense costs. If such judgment shall find the City and Contractor both liable, the City shall reimburse Contractor’s legal costs in an amount equal to the percentage the award against the City represents to the overall award from both Contractor and City.

### **13.1.4 Hazardous Substances**

A Claim under this Section includes: response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs and similar costs, damages and expenses; any Claim that the City is liable or responsible in any way; or a Claim related to material collected, transported, recycled, Processed, treated or Disposed of by Contractor.

Contractor’s Obligations under this Article 13 shall apply, without limitation, to:

- (A) A Claim brought under or based on the provisions of any Applicable Law;
- (B) A Claim arising out of Contractor’s ownership, use, sale, design, construction, maintenance or operation of the Facility;



- (C) A Claim arising out of the marketing, sale, distribution, storage, transportation, Disposal, Processing or use of any materials Recovered by Contractor; or
- (D) A Claim arising out of a breach of an express or implied warranty, representation or covenant under this Agreement.

## 13.2 Consequential Fines

Contractor shall pay any consequential fines and penalties assessed on the City, including any related to AB 939 and AB 341, resulting from Contractor's failure to perform its obligations hereunder. City may allow for the payment of such fines and penalties over time so long as it does not have a material adverse affect on the City's Solid Waste Fund.

If Contractor does not pay any such damages to City by the first day of the month after the month in which they are assessed or within thirty (30) calendar days of such other due date as shall have been agreed to by the Contractor and the City, the City may (i) withhold such amounts from monthly Gate Rate payments, unless such delay would adversely impact the City's Solid Waste Fund, or (ii) declare Contractor in default in accordance with Section 14.1.

## 13.3 Insurance

### 13.3.1 Required Forms of Insurance

Contractor shall secure and maintain the following insurance throughout the Term of the Agreement:

- (A) Commercial General Liability Insurance. Contractor shall provide commercial general liability insurance General Liability (ISO CGL forms, at least as broad as CG 00 01...), including the following extensions:
  - (i) premises and operations;
  - (ii) products and completed operations;
  - (iii) advertising and personal injury;
  - (iv) unlicensed mobile equipment;
  - (v) explosion, collapse and underground hazard coverage;
  - (vi) blanket contractual;
  - (vii) broad form property damage;
  - (viii) premises medical coverage; and
  - (ix) cross suits.

Minimum limits of liability for Commercial General Liability are \$2,000,000 each occurrence or \$4,000,000 aggregate, as applicable, for Combined Single Limit-Bodily Injury, Property Damage Liability, and Products/Completed Operations. Limits can be met using Umbrella or Excess Liability policy.

Deductibles shall be no greater than \$10,000 per loss, which deductibles shall be the responsibility of Contractor.

- (B) Commercial Automobile Liability Insurance. Contractor shall maintain Commercial Automobile Liability Insurance coverage for:



- (i) all autos owned or leased to the Contractor that are being used for this Project;
- (ii) cross suits; and
- (iii) transportation by insured vehicle of “pollutants” or “wastes” and clean-up costs relating to spills thereof

Minimum \$2,000,000/accident required. Deductibles shall be no greater than \$10,000 per loss, which deductibles shall be the responsibility of Contractor. Limits can be met using Umbrella or Excess Liability policy.

- (C) Workers’ Compensation Insurance. Contractor shall maintain Workers’ Compensation Insurance Part 1, in accordance with Applicable Law. The policy shall include a waiver of rights of subrogation against the City and the Facility.
- (D) Employers’ Liability Insurance. Contractor shall maintain Employers’ Liability Insurance in the following amounts:
  - (i) bodily injury by accident \$1,000,000 each accident; and
  - (ii) bodily injury by disease \$1,000,000 policy limit  
\$1,000,000 each employee

The policy shall include a waiver of rights of subrogation against the City.

- (E) Crime Insurance, Including Employee Dishonesty. Contractor shall maintain Crime Insurance, including Employee Dishonesty including losses of “money, securities and property other than money and securities”, including Gate Rates, Recovered Materials, and Recovered Materials revenues lost as a result of burglary, theft, forgery, alteration, disappearance and destruction occurring on or off-site. Deductibles shall be no greater than \$15,000 per loss, which deductibles shall be the responsibility of Contractor.
- (F) Umbrella Liability and/or Excess Liability Policies. Contractor shall maintain Umbrella Liability and/or Excess Liability policies with endorsements providing “drop down” coverage solely for Contractor’s performance of its obligations required by this Agreement, effective when primary limits of General Liability, Automobile and Employers’ Liability policies described in items A, B and D above are exhausted, with minimum limits of liability (Occurrence Form) of \$10,000,000 each occurrence or in the aggregate, as applicable, for Combined Single Limit-Bodily Injury and Property Damage Liability and \$10,000,000 aggregate for Products/Completed Operations at the Facility. Deductibles shall be no greater than \$10,000 per loss, which deductibles shall be the responsibility of Contractor. (Accord 25 Certificate required.)
- (G) Environmental Impairment and Pollution Liability. Contractor shall maintain Environmental Impairment and Pollution Liability coverage for any environmental liability attributable to Contractor’s actions, including clean-up and/or transportation of pollutants or hazardous materials. Minimum limits of liability shall be \$10,000,000 per occurrence and in the aggregate. The amount of the deductibles shall be determined when the policy is obtained.

### 13.3.2 Additional Insurance Requirements

- (A) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention’s as respects City, its officials, employees



- and agents; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- (B) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:
- (i) General Liability and Automobile Liability Coverages
    - (a) City, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as Additional Insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; Premises owned, leased or used by Contractor; or vehicles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its elective and appointive boards, commissions, officials, employees, agents or volunteers. The coverage shall be at least as broad as ISO form CG 20 10 04 13.
    - (b) Contractor's insurance coverage shall be primary insurance as respects City, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
    - (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, elective and appointive boards, commissions, employees, agents or volunteers.
    - (d) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - (ii) Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against City, its officials, elective and appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Contractor for City.
  - (iii) All Coverages – Contractor shall immediately (and at least sixty (60) calendar days beforehand) notify the City if any required insurance coverage is cancelled or not renewed, and Contractor shall immediately obtain replacement coverage meeting the requirements of this Section 13.3.
- (C) Acceptability of Insurers. The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.
- (D) Verification of Coverage. Contractor shall furnish City's Finance Director, at the address provided below or another address as City may provide, with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences.

City reserves the right to require complete, certified copies of all required insurance policies, at any time.

City of Tracy  
Finance Director  
333 Civic Center Plaza  
Tracy, CA 95376

Upon request of the City's Finance Director, the Contractor shall cause its Subcontractors to provide proper evidence of insurance coverage required hereunder, satisfactory to the City's Finance Director. Contractor shall institute a comprehensive accounting system to assure the City it is monitoring all insurance requirements hereunder, including those of its Subcontractors.

- (E) Companies and Subcontractors. Contractor shall include all companies and Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Contractor and Subcontractor. Each Subcontractor providing its own insurance shall also name the City as an "Additional Insured" and provide endorsements to that effect, if the Subcontractor will be doing work on City property. All coverages for Companies and Subcontractors shall be subject to all of the requirements stated herein.
- (F) Required Endorsements. The Commercial General Liability policy shall contain endorsements in substantially the following form:
- (i) ISO AI endorsement form at least as broad as CG 20 10 04 13.
  - (ii) "City, its officers, elective and appointive boards, commissions, employees, and agents are Additional Insureds on this policy."
  - (iii) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
  - (iv) "Inclusion of City as an Additional Insured shall not affect City's rights as respects any claim, demand, suit or judgment brought or recovered against Contractor. This policy shall protect Contractor and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Contractor's liability as set forth in the policy beyond the amount shown or to which Contractor would have been liable if only one party had been named as an insured."
- (G) Delivery of Proof of Coverage. Simultaneously with the execution of this Agreement, Contractor shall furnish City certificates of each policy of insurance required hereunder, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, Commencement Dates and dates of expiration of policies and shall have all required endorsements. CG forms shall be at least as broad as CG 00 01. If City requests, copies of each policy together with all endorsements, shall also be promptly delivered to City.
- Renewal certificates will be furnished periodically to City to demonstrate maintenance of the required coverage throughout the Term.
- (H) Other Insurance Requirements.



- (i) If any services are delegated to another company or Subcontractor, Contractor shall require such company or Subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the company or Subcontractor's employees engaged in the work in accordance with this Section. The liability insurance required by this Section shall cover the company and all Subcontractors or the company or Subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section.
- (ii) Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against Contractor or any Contractor or Subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to City.

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

## **ARTICLE**

## **DEFAULT, REMEDIES AND LIQUIDATED DAMAGES**

**14**

### **14.1 Events of Default by Contractor**

Each of the following shall constitute an event of Contractor default unless excused by an event of Uncontrollable Circumstances or caused by prior breach by the City of this Agreement.

- (A) Fraud or Deceit or Misrepresentation. If Contractor engages in, or attempts to practice, any fraud or deceit upon City or makes a misrepresentation regarding material information to City.
- (B) Insolvency or Bankruptcy. If Contractor becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- (C) Failure to Maintain Coverage. If Contractor fails to provide or maintain in full force and effect insurance, workers' compensation, liability, or indemnification coverage as required by this Agreement.
- (D) Violations of Regulation. If Contractor violates any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement which violation, orders or filings cause a material adverse effect in Contractor's ability to perform Contractor's Obligations hereunder, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until a final decision adverse to the Contractor is entered.
- (E) Failure to Ensure Facility Availability. Contractor fails to accept and transfer some or all of the Covered Materials generated by Collection Franchisee for more than four (4) consecutive work days, even if due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action, and without arranging at its own cost and with City approval for use of an alternative facility or facilities for transfer and Processing of Covered Materials generated by Collection Franchisee.
- (F) Failure to Pay Fees or Submit Reports. If Contractor fails to make any payments required under



this Agreement and/or refuses to provide City, within ten (10) calendar days of the demand, with required information, reports, and/or records in a timely manner as provided for in the Agreement.

- (G) Failure to Cooperate with Audits. Failure to complete, perform or cooperate with any audit or reviews as described by this Agreement.
- (H) False or Misleading Statements. Any material written representation or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made.
- (I) Attachment. The seizure of, attachment of, or levy on, the operating equipment of Contractor, including, without limits, its equipment, maintenance or office facilities, vehicles, or any part thereof which seizure or attachment shall cause a material adverse effect in Contractor's ability to perform Contractor's Obligations hereunder.
- (J) Failure to Provide Assurance of Performance. Contractor fails to provide reasonable assurances of performance during instances including but not limited to an event of default or bankruptcy.
- (K) Failure to Maintain or Secure Permits/Approvals. Contractor fails to acquire and maintain all Permits/licenses required to perform Contractor Obligations or to acquire and maintain those needed for Facility improvements and operational changes.
- (L) Assignment. Contractor Assigns any portion of the Agreement in violation of Section 15.5 hereof.
- (M) Disposal of Recovered Materials. Disposal of Recovered Materials without prior written approval of City.
- (N) Any other substantive failure to perform Contractor's Obligations.

Contractor shall have seventy two (72) hours from the time it is given Notification by City to cure any default arising under Subsections C, E, F, G, H, I, J, K, L, M, and N unless such cure is not reasonably possible within such period in which case, provided that Contractor commences and pursues such cure with diligence until the cure is complete and reimburses the City for any costs it incurs due to the failure of the Contractor to meet Contractor Obligations during such cure period, it shall be given such additional time to cure as is necessary but in no event more than six (6) months from the Notice of default. It is expressly understood that Contractor is not entitled to receive Notice of default, or to cure such default, with respect to those matters listed in Subsections A, B, and D above.

## 14.2 Criminal Activity of Contractor

Should the Contractor or any of its officers or directors have a criminal conviction of, have made an admission of guilt for, or pled nolo contendere to any offense directly related to this Agreement or any other Agreement held with the City, from a court of competent jurisdiction with respect to:

- (A) fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;
- (B) bribery or attempting to bribe a public officer or employee of a local, State, or federal agency in that officer's or director's or Contractor's employee's official capacity;
- (C) embezzlement, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, receiving stolen property, or theft; or





- (D) conviction for any other crime indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the Contractor or its officers or directors.

#### **14.2.1 Remedy for Contractor Activity**

City has the option to exercise each or all of the remedy options below related to criminal activity of Contractor:

- (A) To have each, officer, or director of Contractor responsible for such proscribed conduct promptly terminated and/or replaced; and/or,
- (B) To unilaterally terminate this Agreement.

#### **14.3 Remedies for Contractor Default**

If Contractor commits a material breach, (including any of the matters listed in Section 14.1), and, if permitted to cure, does not cure it within the time period specified in 14.1, City is entitled to any of the following remedies:

- (A) Termination. Unilaterally terminate this Agreement. If City decides to terminate this Agreement upon a default by Contractor, City has the right to do so upon giving ten (10) calendar days Notice to Contractor, or three (3) calendar days if there is an imminent danger to public welfare or safety. City's rights to terminate this Agreement are not exclusive, and City's termination of this Agreement shall not constitute an election of the remedies. Instead, such remedies shall be in addition to any and all other legal and equitable rights and remedies which City may have. Any such notice of termination described in this Subsection shall only be given upon approval of the City Council.
- (B) Liquidated Damages. Impose Liquidated Damages in accordance with Section 14.6 of this Agreement
- (C) Other Remedies and Sanctions. The City is entitled to pursue any other legally available remedy or sanction, including a suit for damages, injunctive relief and or specific performance.
- (D) Assurances of performance. City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances or timely and proper performance of this Agreement, in such form and substance as City may require. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the City, such failure or refusal shall be an event of default.
- (E) Other sanctions. The Parties are entitled to pursue any other available remedies in law or in equity.

#### **14.4 Waiver**

City's waiver of any breach or default shall not be deemed to be a waiver of any other breach or default, including ones with respect to the same obligations hereunder. The subsequent acceptance by City of any damages or other money paid by Contractor shall not be deemed to be a waiver by City of any pre-existing or concurrent breach or default.



## 14.5 Contractor's Payment of Damages

Contractor shall pay City any damages accrued and payable during the then-current Contract Year or portion thereof which would have otherwise become payable unless a settlement of the matter between the Parties shall provide for other payment provisions. City may allow for the payment of such fines and penalties over time so long as it does not have a material adverse affect on the City's Solid Waste Fund.

Contractor's liability for such payments shall survive the termination of this Agreement.

## 14.6 Liquidated Damages

- (A) Applicability. The provisions of this Section 14.6 shall not be applicable during the term of this Agreement unless the Agreement is assigned as provided for in Section 15.5 of this Agreement. In the event the Agreement is assigned as provided for in Section 15.5 the terms and conditions of this Section 14.6 shall become effective concurrently with the assignment.
- (B) General. City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of Contractor's Obligations. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that the services that are the subject of this Agreement 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 specific breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.
- (C) Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The Parties further acknowledge that consistent, reliable performance of Contractor Obligations is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in entering this Agreement with it, and in assisting with funding of the Facility. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City, its residents and businesses, and Customers may suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which such parties will suffer. Therefore, without prejudice to City's right to treat such breaches as an event of default under Section 14.1 hereof, the Parties agree that the liquidated damage amounts set forth in Exhibit 5 represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City and others that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample

opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

City

Contractor

Initial Here

Initial Here

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth in Exhibit 5.

City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints.

Before assessing liquidated damages, City and Contractor shall meet and confer regarding these specific areas of substandard performance. If, despite such meeting, incidents of the type(s) addressed at the meeting continue to occur, City may proceed to assess liquidated damages as provided below.

In order to begin the process of assessing liquidated damages, City shall give Contractor Notice of its intention to do so. The Notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Contractor may, within ten (10) calendar days after receiving the Notice, request a meeting with City. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Contractor with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The Contractor shall have the right to appeal the determination to the City Manager. The decision of the City Manager shall be final but the Contractor shall have the right to appeal the decision of the City Manager, under Tracy Municipal Code section 1.12.020 to the City Council which may ratify, reverse, or modify the decision of the City Manager.

- (D) Amount. City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.
- (E) Timing of Payment. City may either withhold the liquidated damage amount from compensation to be paid to Contractor, or City may request Contractor to pay any liquidated damages assessed by City within ten (10) calendar days after they are assessed. If they are not paid within the ten (10) calendar day period and there is insufficient Contractor Compensation to cover these damages due Contractor within the ten (10) calendar day period or other period as Parties may agree to, City may find Contractor in default and terminate this Agreement.

## 14.7 Default by the City

Each of the following shall constitute an "Event of Default" on the part of the City unless excused by an event of Uncontrollable Circumstances or caused by prior breach by the Company of this Agreement:

- (A) Failure to Comply with Agreement. The failure or refusal by the City to substantially perform any material obligation under this Agreement following written Notice from the Company and failure by the City to cure such breach within twenty (20) calendar days, except that such period shall be extended during such time as the City is diligently taking reasonable steps to cure the



default.

- (B) Failure to Ratify Rates. The failure of the City to comply with the provisions of Section 11.3 hereof.
- (C) Failure to Direct Waste. The failure of the City to direct waste in accordance with Section 4.4.1 hereof and the failure to continue to pay or cause to be paid the Gate Rate as provided in Article 11 hereof within the time provided therein.

#### **14.8 Remedies Upon Default by the City**

In the event of City default hereunder, the Contractor shall have the right to pursue any legal remedies available in law or in equity.

#### **14.9 Excuse from Performance**

- (A) The Parties shall be excused from performing some or all of their respective obligations under this Agreement if there is an Uncontrollable Circumstance, as defined in Section 1.65 that actually prevents such performance. The Party claiming excuse from performance shall, within two (2) work days after such Party has Notice of such cause, give the other Party Notice of the facts constituting such cause and asserting its claim to excuse under this Section.
- (B) The interruption or discontinuance of Contractor's services caused by one (1) or more of the events excused shall not constitute a default by Contractor under this Agreement.
- (C) Upon the occurrence of an event constituting an Uncontrollable Circumstance, the Parties shall meet and confer no later than five (5) work days after such event and determine whether one (1) or more services required of the Contractor hereby can be resumed within seven (7) calendar days of the event date notwithstanding the event. If some services can be resumed within seven (7) calendar days of the event date the Contractor shall resume those services under the terms and conditions of the Agreement. At that time either Party may request an Extraordinary Adjustment under the provisions of Section 11.5. If some services can be resumed at some future date exceeding seven (7) calendar days from the event date, the Contractor shall provide the City with a plan for resuming those services at the meeting. At that time the Parties shall discuss the plan and either Party may request an Extraordinary Adjustment under the provisions of Section 11.5. The City may obtain temporary substitute services for any services that cannot be performed by the Contractor until such time as it again can perform.
- (D) If the event constituting an Uncontrollable Circumstance is such that no services can be performed by the Contractor hereunder, and if substitute services are available, the City may obtain such temporary substitute services during the duration of the inability of Contractor to perform its duties hereunder.
- (E) If the event constituting an Uncontrollable Circumstance shall cause damage or destruction to the Facility or otherwise prevent Contractor's performance hereunder but Contractor reasonably believes its ability to comply with Contractor's Obligations can be restored within eighteen (18) months of the event of Uncontrollable Circumstance, the City may not terminate the Agreement until the end of such period as long as Contractor is using Reasonable Business Efforts to restore its ability to meet Contractor's Obligations as soon as is practicable. During such period, the City may obtain temporary substitute services.

- (F) If the event constituting an Uncontrollable Circumstance shall reasonably prevent the Contractor from ever resuming performing its obligations under this Agreement, then the City shall have the right to terminate this Agreement upon approval of such termination by the City Council.

## **ARTICLE OTHER AGREEMENTS OF THE PARTIES**

**15**

### **15.1 Relationship of Parties**

The Parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of City or as a partner of or joint venture with City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, affiliates, contractors, Subcontractors and agents. Neither Contractor nor its officers, employees, affiliates, contractors, Subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

### **15.2 Compliance with Law**

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, subject to Article 11, comply with all Applicable Laws now in force and as they may be enacted, issued, or amended including, but not limited to, the payment of prevailing wage, if applicable.

### **15.3 Governing Law**

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

### **15.4 Jurisdiction**

Except for those matters where Federal Courts have exclusive jurisdiction, any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. The Parties agree that venue is made in and will be performed in courts sitting in San Joaquin County, California or, in case of federal jurisdiction, Federal District Court, Central Division. Parties further agree that the site of any other hearing or action, whether arbitration or non-judicial, of whatever nature of kind regarding this Agreement, shall be conducted in San Joaquin County, California.

### **15.5 Assignment**

Contractor shall not enter into negotiations to assign its rights, or delegate, subcontract or otherwise transfer any Contractor Obligations under this Agreement (collectively referred to as an "assignment") to any other Person for a period of three (3) years from the Commencement Date of this Agreement.

After such three (3) year period Contractor shall not assign its rights, nor delegate, subcontract or otherwise transfer any Contractor Obligations under this Agreement to any other Person without the



prior written consent of the City Council. Any such assignment made without the consent of the City Council shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this Section the term assignment shall be given the broadest possible interpretation, and shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided said sale, exchange or transfer would result in a Change of Control of Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a Change of Control; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor of any of its affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which results in a Change of Control.

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

#### **15.5.1 Requirements of the Contractor**

If Contractor requests City Council's consideration of and consent to an assignment, City Council may deny or approve such request in its reasonable discretion. Any request for an assignment shall be made in a manner to be prescribed by the Public Works Director, and no request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met (or with respect to matters that would only occur upon completion of the assignment if approved, made reasonable assurances that it will meet) the following requirements:

- (A) Contractor shall undertake to pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. An advance payment of one hundred thousand dollars (\$100,000) towards expenses shall be paid to City prior to City consideration of any assignment request and Contractor shall be responsible to pay all costs incurred by City in considering a request for assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the assignment.
- (B) Contractor shall pay the City a transfer assignment right fee equal to two hundred fifty thousand dollars (\$250,000). This payment shall be due no later than five (5) calendar days before final closing of the assignment but if paid and the assignment shall not be completed, it shall be refunded to the Contractor. If there shall be an escrow-type arrangement with an escrow agent,

financial institution or other third party in connection with the assignment and the documentation thereof and payment of the purchase price to Contractor in consideration of the assignment by the assignee, then a payment of this amount by Contractor to the escrow agent or institution who is instructed to pay it over to the City upon closing of the assignment, then such payment shall be considered as compliant with this subsection.

- (C) Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.
- (D) Contractor shall furnish City with proof satisfactory to City: (i) that the proposed assignee has at least five (5) years of transfer station and MRF operating and management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, State or local agency having jurisdiction over its solid waste and Recycling management operations which are materially greater than those suffered by similar companies engaged in solid waste and recycling management operations due to any significant failure to comply with State, federal or local Applicable Laws and that the assignee has provided City with a complete list of any such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion as compared with similar companies engaged in solid waste and recycling management operations; (iv) that the proposed assignee conducts its solid waste and Recycling management practices in accordance with sound solid waste and Recycling management practices in full compliance with all federal, State and local laws regulating the handling of solid waste and Recycling including Hazardous Substances, and; (v) proposed assignee(s) financial resources are sufficient to ensure ability to meet all Contractor Obligations under this Agreement.
- (E) Contractor shall furnish the City with any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

In considering a requested assignment, City may at its sole discretion exercise its right to purchase the Facility from the Contractor as provided in Section 4.15.

Under no circumstances shall City be obliged to consider any proposed assignment by City if Contractor is in default at any time during the period of consideration. Should City consent to any assignment request, such assignment shall not take effect until all conditions relating to City's approval have been met.

### **15.5.2 Requirements of the Proposed Assignee**

In approving an assignment, City may require that the proposed assignee agree to one or more of the following:

- (A) For any assignment approved on or before December 31, 2024, a reduction in the length of the remaining term of the Agreement to ten (10) years from the date of the City's approval of the assignment.
- (B) Reasonable increases in the insurance limits, or modifications in the insurance requirements contained in Section 13.3.
- (C) Execution of a Guaranty by the controlling entity in the event of a City approved assignment of this Agreement to any corporation, limited liability company and every similar corporate entity that is controlled by another such corporate entity through ownership of a majority of the

equity interests in the assignee. The Guaranty shall unconditionally and absolutely guarantee the performance of the Contractor's obligations hereunder and shall be in a form approved by the City, which approval shall not be unreasonably withheld. For the avoidance of doubt, while the City and the controlling entity may agree on any form of Guaranty they wish, if a form of Guaranty proposed by the City is substantially similar to those in use by other municipalities in northern California in connection with similar solid waste collection or facility agreements, then it shall be presumed to be reasonable by the controlling entity. In the event the City does not propose a Guaranty form then if a form of Guaranty proposed by the controlling entity is substantially similar to those accepted by other municipalities in northern California in connection with similar solid waste collection or facility agreements by the controlling entity, then it shall be presumed to be reasonable. The form of Guaranty shall be provided concurrently with the request for City approval of the assignment of the Agreement and no assignment to the proposed assignee shall be effective until the Controlling Entity executes the Guaranty. This paragraph shall not be construed so as to require a Guaranty from human persons controlling an assignee or Controlling Entity thereof.

- (D) Funding of a fidelity bond in an amount similar to such required by other Cities for similar facilities and/or provision of financial assurance in a form other than a fidelity bond, such as a letter of credit or certificate of deposit.
- (E) Application of liquidated damages as set forth in Section 14.6 and Exhibit 5 including the provision of the initials as required in Section 14.6(C) and Exhibit 5.

## **15.6 Binding on Assigns**

The provisions of this Agreement shall inure to the benefit to and be binding on the permitted assigns (if any) of the Parties.

## **15.7 Cooperation in Unforeseen Circumstances**

The Parties recognize and agree that unforeseen developments and circumstances may occur during the term of this Agreement that materially modify or otherwise affect the obligations of the City or the Contractor. The City and the Contractor further agree that in such event each will cooperate in a professional manner and negotiate with the other in good faith to address and resolve such unforeseen developments.

## **15.8 Cooperation Upon Termination or Expiration of Agreement**

Prior to, and at, the end of the term of this Agreement or in the event this Agreement is terminated for cause prior to the end of the term, Contractor shall cooperate fully with City and any subsequent City contractor to assure a smooth transition in provision of service. Contractor's cooperation shall include, but not be limited to:

- (A) Providing Customer billing information.
- (B) Paying City any compensatory damages or liquidated damages, in accordance with Section 14.6, accrued and payable during the then current calendar year or portion thereof which would have otherwise become payable. Contractor's liability for such payments shall survive the termination of this Agreement.
- (C) Paying all taxes due to appropriate parties including, but not limited to, State, county, and local agencies.





(D) Paying any amounts due and owing to the City.

The failure to cooperate with City following expiration of the term or early termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

### **15.9 Parties in Interest**

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

### **15.10 Waiver**

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

### **15.11 Contractor's Investigation**

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

### **15.12 Notice**

All Notices, demands, requests, proposals, approvals, consents and other communications, which this Agreement requires, authorizes or contemplates, shall be in writing and shall either be personally delivered to a representative of the Parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City:

Public Works Director and City Attorney  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

If to Contractor:

Michael Repetto, President  
Tracy Material Recovery & Solid Waste Transfer, Inc.  
P.O. Box 93  
30703 S. MacArthur Drive  
Tracy, California 95378

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

Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) days from the date it is deposited in the mail.



### **15.13 Delegation of Authority**

The administration of this Agreement by the City shall be under the supervision and direction of the Public Works Director and the actions specified in this Agreement, unless otherwise stated, shall be taken by the Public Works Director, or his or her designee.

### **15.14 Contractor's Representative**

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

### **15.15 Compliance with Municipal Code**

Contractor shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement provided that any changes thereto may be a Change in Law as provided herein.

### **15.16 Exercise of Options**

Except as otherwise provided, City's or Contractor's exercise of any approval, disapproval, option, discretion, election or choice hereunder shall be in each Party's independent and sole reasonable control and judgment.

### **15.17 Cooperation and Disputes with Approved Site Operators**

Contractor shall fully comply with Contractor's Obligations and cooperate to its fullest extent with the operator of an Approved Disposal Site, Approved Organics Processing Site, and Approved Recyclables Processing Site. In the event of disputes between Contractor and said operator, Contractor shall continue performance of Contractor's Obligations under this Agreement and shall attempt to continue to resolve such dispute in a cooperative manner, including but not limited to negotiating with the operator in good faith.

### **15.18 Payment of Taxes**

Contractor shall pay, when and as due, any and all Federal, State, and local fees, assessments, or taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes.

City and Contractor agree that this Agreement does not create a possessory interest in Contractor subject to taxation. If, however, it is asserted that this Agreement does create a taxable property interest, Contractor will be solely responsible for contesting any proceeding in which such an assertion is made and solely responsible for payment of any taxes or payments assessed as a result of any determination made in any such proceeding. However, if such possessory interest subjects the Agreement to such taxation due to a Change in Law, the Contractor may recover the additional costs thereof pursuant to Article 11.

### **15.19 Amendments**

The Parties may change, modify, supplement, or amend this Agreement only upon mutual written



agreement duly authorized and executed by both Parties.

## **15.20 Dispute Resolution**

Obligation to Continue Performance. In the event of a dispute by the Parties arising from this Agreement, each Party shall continue the performance of their respective obligations under this Agreement pending the resolution of any dispute.

- (A) Notice. The Party claiming the dispute shall Notify the other Party in writing which Notice shall include a description of the nature of the dispute, any financial affect which has or is likely to be incurred, and the suggested resolution by the claiming Party.
- (B) Meet and Confer. Within thirty (30) calendar days of receipt by either Party of a Notice of dispute, the Parties shall meet and negotiate in good faith a resolution of the dispute.
- (C) Mediation. If the Parties cannot resolve the dispute through such good faith negotiation, either Party may request that the dispute be submitted to mediation and if such request is made, the Parties shall select a mutually agreed neutral mediator with at least five (5) years experience at dispute resolution in an effort to resolve the dispute by a resolution in writing between the Parties. If the Parties cannot agree on such a resolution after mediation the Parties may elect to utilize an independent expert as set forth in Section 15.20 (D) below
- (D) Independent Expert. If the Parties fail to reach agreement on a change proposed by the City after thirty (30) days from the receipt of the proposal, the City may submit the matter to determination by an independent expert.

The independent expert shall have at least five (5) years experience with solid waste facilities and operations of the type under dispute and shall not have worked for either Party for a period of five (5) years prior to referral of the dispute unless both Parties agree to the selection of that independent expert. If the Parties cannot agree on an independent expert, each Party shall select an independent expert and those independent experts shall select a third independent expert.

- (E) Continued Dispute. If the Parties cannot agree on such a resolution after utilizing mediation, as set forth in Section 15.20 (C) above and/or an independent expert, as set forth in Section 15.20 (D) above, the Parties shall have the right to appeal to the City Manager and/or to seek any remedy available at law or in equity from a court of competent jurisdiction.

## **ARTICLE MISCELLANEOUS PROVISIONS**

**16**

### **16.1 Entire Agreement**

This Agreement contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals, and agreements between the Parties, whether written or oral. The Parties acknowledge this document has been executed with the consent and upon the advice of counsel. Each of the Parties acknowledges that no Party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other Party to execute this instrument.



## **16.2 Section Headings**

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

## **16.3 References to Laws and Other Agreements**

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

## **16.4 Interpretation**

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

## **16.5 Agreement**

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

## **16.6 Severability**

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

## **16.7 Exhibits**

Each of the Exhibits identified as Exhibit 1 through 6 is attached hereto and incorporated herein and made a part hereof by this reference.

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

**CITY OF TRACY:**

Robert Rickman  
By: Robert Rickman  
Title: Mayor  
Date: 1-13-17

Approved by City Council on 12/20/16  
By Resolution 2016-275

Attest: Nora Pimentel  
Nora Pimentel, City Clerk

Approved as to form:  
Bill Sartor  
Bill Sartor, City Attorney

**TRACY MATERIAL RECOVERY &  
SOLID WASTE TRANSFER, INC.**  
A California Corporation

Michael Repetto  
By: Michael Repetto  
Title: President  
Date: 12/14/16

Curtis Repetto  
By: Curtis Repetto  
Title: Chief Financial Officer  
Date: 12/14/16



**EXHIBIT 1 INITIAL GATE RATES**

Beginning for services in January 1, 2017, CITY shall compensate CONTRACTOR for services performed in accordance with this Agreement in the following rates:

Refuse	\$115.65 per Ton
Food Waste	\$115.65 per Ton
Construction & Demolition Debris	\$115.65 per Ton
Wood	\$67.00 per Ton
Greenwaste	\$67.00 per Ton

## EXHIBIT 2 GATE RATE ADJUSTMENT METHOD

The purpose of this Exhibit is to describe and illustrate the method by which the Contractor's Gate Rates shall be adjusted on an annual basis commencing with the Contract Year beginning January 1, 2018.

### A. ANNUAL ADJUSTMENT OF GATE RATES

On or before November 1, 2017 and each November 1 during the term of this Agreement, or such other time as may be agreed to between City and Contractor, Contractor shall deliver to City the Gate Rate application in the format set forth herein. The application shall consist of the following templates agreed to by the City and Contractor.

1. Gate Rate Adjustment Summary
2. Labor Index Component
3. Health and Welfare Benefits Component
4. Workers Compensation Benefits Component
5. Contract Labor Component
6. Fuel Component
7. CPI Adjustment (Used to adjust the Other Operating Expense, Profit, and Depreciation and Amortization Components.)
8. Inbound and Outbound Tonnage Detail
9. Extraordinary Adjustment Detail
10. Other Information as Agreed to By City and Contractor.

### B. GATE RATES ADJUSTMENT PROCESS

The Gate Rates shall be adjusted in the following order as is shown in Exhibit 2.

1. **Index Gate Rate Adjustment Factors.** Each current Gate Rate shall be multiplied by the Index Adjustment Factor to calculate the Index Adjustment. The Index Adjustment shall be added to the Gate Rates from the prior Contract Year to calculate the Index Adjusted Gate Rates.
2. **Pass-Through Gate Rate Adjustment Factors.** Each Index Adjusted Gate Rate shall then have the appropriate per Ton pass-through rates added to it as follows to calculate the Pass-Through Adjusted Gate Rate:
  - A. The per Ton Disposal Pass-through rate shall be added to the Mixed Municipal Waste Index Adjusted Gate Rate.
  - B. The per Ton Agency Fee Pass-Through rate shall be added to the Index Adjusted Gate Rates listed in Exhibit 1 of this Agreement.
  - C. The per Ton City Payment Pass-Through rate, if any, shall be applied each of the Index Adjusted Gate Rates listed in Exhibit 1 of this Agreement.
  - D. The per Ton City Tonnage Pass-through rate shall be added to the Mixed Municipal Waste Index Adjusted Gate Rate.
3. **Extraordinary Adjustments.** The appropriate Adjusted Gate Rate shall be adjusted for an extraordinary rate adjustment meeting the criteria of Section 11.5 of this Agreement. The rate

adjustment methodology shall be as agreed to between the City and the Contractor.

**C. GATE RATE ADJUSTMENT FACTORS**

Gate Rate Adjustment Factor shall consist of “Indexed Gate Rate Adjustment Factors”, “Pass-through Gate Rate Adjustment Factors”, and “Extraordinary Gate Rate Adjustment Factors” as defined below.

**1. Indexed Gate Rate Adjustment Factor**

The Indexed Gate Rate Adjustment Factor is comprised of the eleven (11) components described below.

Each component is assigned a weighted percentage factor of that components proportionate share of the total of the Contractor’s estimated expenses and profit for Contract Year 1. The percentage weight for each component is multiplied by the change in each appropriate index or the actual change in the cost or fee to calculate a weighted percentage for each component. The weighted percentage change for each component is added together to calculate the Gate Rate Adjustment Factor each Contract Year as is shown in Exhibit 2B.

The component weighting factors shall remain as set forth below for Contract Years one through five. Thereafter the component weighting factors shall be adjusted every five (5) years based on the Contractor’s expenses and profit for the second preceding Contract Year as shown in the most recent available annual audit required by Section 12.3.3 (A). Therefore the component weighting factors for Contract Year 6 shall be based on the audited figures from Contract Year 4.

Details of each component, their respective weighting, and the index or adjustment basis used for the annual adjustment of each are described below.

If any of the indices described in this Exhibit 2 shall be discontinued or modified such that it no longer reasonably reflects the cost component hereunder for which it was originally chosen, the parties shall reasonably agree on another index which is as similar as possible to the discontinued index.



**A. Labor Component**

The Labor Component will be adjusted by the weighted percentage change in the average hourly labor rate of the three (3) labor categories as shown on the labor index template included in rate application for the prior Contract Year and the current Contract Year. That is, the Labor Component portion of the January 1, 2018 rate adjustment will be the weighted percentage change in the average hourly labor rates for the 2016 Contract Year and the 2017 Contract Year multiplied by the Labor Component weighting factor. The Labor Component weighting factor is twenty six and sixty five hundred percent (26.65%). A summary of a sample Labor Component calculation is shown below.

**Sample Labor Index Information for Exhibit 2**

Labor rates Adjusted 7/1

Sample January 1, 2018 Rate Adjustment

	# of Empl	Avg Mo Salary 2017	Avg Mo Salary 2016	\$ Variance	% Variance	Weighted Allocation	Labor Index Component Adjustment
<b>Category 1 - Drivers, Mechanics and Scalehouse</b>							
Totals	16.1	\$ 4,570.33	\$ 4,524.82	\$ 45.51	1.01%	25.00%	0.25%
<b>Category 2 - Sorting operations, Compost and Janitorial</b>							
Totals	40.3	\$ 2,500.51	\$ 2,344.08	\$ 156.43	6.67%	62.58%	4.18%
<b>Category 3 - Supervisory</b>							
Totals	8	\$ 8,858.36	\$ 8,590.79	\$ 267.57	3.11%	12.42%	0.39%
All Category Totals	64.4	\$ 3,807.76	\$ 3,616.59	\$ 191.17	5.29%	100.00%	4.81%

**B. Health and Welfare Benefits Component**

The Health and Welfare Benefits (HWB) Component will be adjusted by the weighted percentage change in the average monthly health and welfare benefit rates of all eligible employee categories in effect on November 1<sup>st</sup> of the prior Contract Year and November 1<sup>st</sup> of the current Contract Year. That is, the HWB Component of the January 1, 2018 rate adjustment will be the weighted percentage change in the average monthly HWB rates in effect on November 1, 2016 and those rates in effect on November 1, 2017 multiplied by the HWB Component weighting factor. The HWB Component weighting factor is four and eighty four hundred percent (4.84%). A summary sample HWB Component calculation is shown below.

**Sample Health and Welfare Benefits Index Information for Exhibit 2**

Premiums adjusted 11/1

Sample January 1, 2018 Rate Adjustment

Category	Rate 11/1/16	Rate 11/1/17	Dollar Variance	% Increase	Weighted Allocation of Total Expense	HWB Index Component Adjustment
<b>Health</b>						
EE (HMO)	\$ 640.44	\$ 685.27	\$ 44.83	7.00%		
EE+SP	\$ 1,440.97	\$ 1,541.84	\$ 100.87	7.00%		
EE+Ch	\$ 1,216.85	\$ 1,302.03	\$ 85.18	7.00%		
EE+Fam	\$ 2,081.46	\$ 2,227.16	\$ 145.70	7.00%		
Total				7.00%	92%	6.44%
<b>Dental/Vision</b>						
EE	\$ 53.09	\$ 54.77	\$ 1.68	3.16%		
EE+1	\$ 102.42	\$ 105.66	\$ 3.24	3.16%		
EE+Fam	\$ 171.20	\$ 176.62	\$ 5.42	3.17%		
Total				3.16%	8%	0.25%
<b>Total All Categories</b>						<b>6.69%</b>

**C. Workers Compensation Benefits Component**

The Workers Compensation (WC) Benefits Component will be adjusted by the weighted percentage change in the average monthly WC costs of the three (3) labor categories as shown on the WC index worksheet included in rate application for the prior Contract Year and the current Contract Year. That is, the WC Component of the January 1, 2018 rate adjustment will be the weighted percentage change in the average monthly WC costs per full time equivalent employee for the 2016 Contract Year and the 2017 Contract Year multiplied by the WC Component weighting factor. The WC Component weighting factor is one and ninety four hundred percent (1.94%). A summary sample WC Component calculation is shown below.

**Sample WC Index Information for Exhibit 2**

**WC Rates Adjusted as of 10/1**

**Sample January 1, 2018 Rate Adjustment**

	# of Empl	Avg Monthly WC Cost Per FTE 2017	Avg Monthly WC Cost Per FTE 2016	\$ Variance	% Variance	Weighted Allocation	W/C Index Component Adjustment
<b>Category 1 - Drivers, Mechanics and Scalehouse</b>							
Total	16.1	\$ 256.44	324.67	\$(68.23)	-21.01%	25.00%	-5.25%
<b>Category 2 - Sorting Operations, Compost and Janitorial</b>							
Total	40.3	\$ 146.75	175.15	\$(28.40)	-16.21%	62.58%	-10.15%
<b>Category 3 - Supervisory</b>							
Totals	8	\$ 392.41	474.88	\$(82.47)	-17.37%	12.42%	-2.16%
All Category Totals	64.4	\$ 204.69	245.85	\$(41.16)	-16.74%	100.00%	-17.56%

**D. Contract Labor Component**

The Contract Labor (CL) Component will be adjusted by the percentage change in the annual hourly rate for contract labor as of October 1<sup>st</sup> of the prior Contract Year and October 1<sup>st</sup> of the current Contract Year in accordance with the annual contract entered into by the Contractor for the provision of contract labor services. That is, the CL Component of the January 1, 2018 rate adjustment will be the percentage change in the hourly rate in effect on October 1, 2016 and October 1, 2017 multiplied by the CL Component weighting factor. The CL Component weighting factor is two and four hundred percent (2.04%). A sample Contract Labor Component calculation is shown below.

**Sample Contract Labor Index Information for Exhibit 2**

**WC Rates Adjusted as of 10/1**

**Sample January 1, 2018 Rate Adjustment**

Contracted Hourly Rate		\$ Variance	Contract Labor Index Component Adjustment
October 2016	October 2017		
\$ 21.38	\$ 22.24	\$ 0.86	4.02%

**E. Fuel Component**

The Fuel Component will be adjusted by the weighted percentage change in the annual average of the Producer Price Index (“PPI”) for number 2 diesel fuel, commodity code 057303, Series ID: wpu057303, not seasonally adjusted, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics for the twelve months ended September of the prior Contract Year and the twelve months ended September of the current Contract Year. That is, the Fuel Component of the January 1, 2018 rate adjustment will be the percentage change in the PPI index described between the annual average for the twelve months ended September, 2016 and the annual average for the twelve months ended September, 2017 multiplied by the Fuel Component weighting factor. The Fuel Component weighting factor is four and sixty seven hundred percent (4.67%). A summary sample Fuel Component calculation is shown below.

Sample Fuel Template For Exhibit 2		
Sample January 1, 2018 Rate Adjustment		
Series Id:	WPU057303	
Item:	No. 2 diesel	
Year	Annual Avg	Fuel Index Component Adjustment
2016	312.5	
2017	207.5	-33.58%

If during the term of this Agreement, the Contractor shall purchase vehicles or equipment that employ natural gas or another alternate fuel other than diesel, and the amount of fuel used by those vehicles and equipment is a material part of the Contractor’s fuel usage, the Parties shall agree on an index which most closely approximates the changes in costs of the alternate fuel then used by the Contractor. The Parties may agree to substitute that index for the diesel index if only a small part of Contractor’s fuel usage still consists of diesel fuel, or if both alternate and diesel represent a material portion of fuel usage, the calculation of the Fuel Component may be performed using both a diesel and an alternate fuel index allocated according to approximate percentage of each fuel used. A summary sample Fuel Component calculation with two (2) fuels is shown below:

Sample January 1, 2018 Rate Adjustment					
Diesel	12 Months Ending 2016 Diesel #2	12 Months Ending 2017 Diesel #2	Fuel Adjustment	Allocable Fuel Use	Allocated Fuel Adjustment
	312.5	207.5	-33.58%	35%	= -11.75%
Alternative Fuel	12 Months Ending 2016 Alternative Index	12 Months Ending 2017 Alternative Index			
	120.0	100.0	-16.67%	65%	= -10.83%
Total Index Fuel Adjustment					=-22.58%



**F. Other Operating Expense Component**

The Other Operating Expense (OOE) Component will be adjusted by the percentage change in the annual average of the Consumer Price Index, All Urban Customers, all items, not seasonally adjusted for the San Francisco-Oakland-San Jose Metropolitan Area, Series ID: cuura422sa0, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics (“CPI-U”) for the twelve months ended August of the prior Contract Year and the twelve months ended August of the current Contract Year. That is, the OOE Component of the January 1, 2018 will be the percentage change in the CPI-U index between the annual average for the twelve months ended August, 2016 and the annual average for the twelve months ended August, 2017 multiplied by the OOE Component weighting factor. The OOE Component weighting factor is seventeen and thirty seven hundred percent (17.31%). A summary sample Other Operating Expense Component calculation using the Consumer Price Index is shown below.

**Sample CPI Index Information for Exhibit 2**

**Sample January 1, 2018 Rate Adjustment**

Series Id: CUURA422SA0

Area: San Francisco-Oakland-San Jose, CA

Item: All items

Index Provided Bi-Monthly

Year	Feb	Apr	Jun	Aug	Oct	Dec	Annual Avg	CPI Component Adjustment
2015					254.5	252.3		
2016	254.9	257.6	259.1	259.9			256.4	
2016					261.0	260.3		
2017	262.6	264.6	266.0	267.9			263.7	2.86%

**G. Operating Profit Component**

The Operating Profit (OP) Component will be adjusted by the percentage change in the annual average of the Consumer Price Index, All Urban Customers, all items, not seasonally adjusted for the San Francisco-Oakland-San Jose Metropolitan Area, Series ID: cuura422sa0, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics (“CPI-U”) for the twelve months ended August of the prior Contract Year and the twelve months ended August of the current Contract Year. That is, the OP Component of the January 1, 2018 will be the percentage change in the CPI-U index between the annual average for the twelve months ended August, 2016 and the annual average for the twelve months ended August, 2017 multiplied by the OP Component weighting factor. The OP Component weighting factor is six and twenty eight hundred percent (6.28%). A sample OP component calculation using the Consumer price Index is shown in Section F above.

**H. Depreciation and Amortization Component**

The Depreciation and Amortization (DA) Component will be adjusted by the percentage change in the annual average of the Consumer Price Index, All Urban Customers, all items, not seasonally adjusted for the San Francisco-Oakland-San Jose Metropolitan Area, Series ID: cuura422sa0, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics (“CPI-U”) for the twelve months ended August of the prior Contract Year and the



twelve months ended August of the current Contract Year. That is, the DA Component of the January 1, 2018 will be the percentage change in the CPI-U index between the annual average for the twelve months ended August, 2016 and the annual average for the twelve months ended August, 2017 multiplied by the DA Component weighting factor. The DA Component weighting factor is seven and one hundred percent (7.01%). A sample DA component calculation using the Consumer price Index is shown in Section F above.

#### **I. Disposal Component**

The Disposal Component is adjusted as a pass-through cost. The Disposal Component weighting factor is included in this calculation in order to show that all compensation components are properly accounted for. The indexed adjustment factor for the Disposal Component is always \$0.00. The Disposal Component weighting factor is twenty nine and thirteen hundred percent (29.13%).

#### **J. Agency Fee Component**

The Agency Fee Component is adjusted as a pass-through cost. The Agency Fee Component weighting factor is included in this calculation in order to show that all compensation components are properly accounted for. The indexed adjustment factor for the Agency Fee Component is always \$0.00. The Agency Fee Component weighting factor is zero and six hundred percent (0.06%).

#### **K. City Payments Component**

The City Payments Component is adjusted as a pass-through cost. The City Payment Component weighting factor is included in this calculation in order to show that all compensation components are properly accounted for. The indexed adjustment factor for the City Payment Component is always \$0.00. As of January 1, 2017, the City Payment Component weighting factor is zero and zero hundred percent (0.00%).

### **2. Pass-Through Gate Rate Adjustment Factor**

The Pass-Through Gate Rate Adjustment Factor is comprised of the four (4) components described below.

The change in cost of each component between the current Contract Year and the upcoming Contract Year is calculated in total and on a per Ton basis. The cost per Ton for each component is then used in the rate adjustment process.

Details of each component, and the methodology used to calculate the cost per Ton are described below.

#### **A. Disposal Pass-Through Component**

The Disposal Component shall be adjusted in the following manner based on the dollar change in the per Ton tip, gate and all other fees imposed on Contractor as of January 1<sup>st</sup> of the current Contract Year and January 1<sup>st</sup> of the upcoming Contract Year in consideration of Contractor's use of the Designated Disposal Site (or Alternate Disposal Site but only as provided in the Agreement) for Disposal of Mixed Municipal Waste and Residue.

1. The per Ton Disposal fee for the current Contract Year shall be subtracted from the per Ton Disposal Fee for the upcoming Contract Year to calculate the per Ton Disposal increase.
2. The per Ton Disposal increase shall then be multiplied by the estimated Tons to be Disposed

in the upcoming Contract Year to calculate the estimated Disposal cost. The estimated Tons to be Disposed in the upcoming Contract Year shall be estimated by the Contractor based on historical and current information and trends and approved by the City, which approval shall not be unreasonable withheld.

3. The estimated Disposal cost shall be divided by the estimated Tons of MMW to be delivered to the Facility in the Upcoming Contract Year to calculate the per Ton Disposal Pass-Through Component adjustment. The estimated Tons of MMW to be delivered to the Facility in the upcoming Contract Year shall be estimated by the Contractor based on historical and current information and trends and approved by the City, which approval shall not be unreasonable withheld.

4. The per Ton Disposal Pass-through Component adjustment shall be applied to the MMW rate after the rate has been adjusted by the Indexed Rate Adjustment Factor as set forth herein.

#### **B. Agency Fees Pass-Through Component**

The Agency Fees Component shall be escalated, based on the percentage change in the ENR Construction Cost Index for the San Francisco Bay Area from January 1<sup>st</sup> of the second preceding Contract Year and January 1<sup>st</sup> of the preceding Contract Year. The percentage change shall be applied to each of the inbound rate categories listed in Exhibit 1 of this Agreement after the rate has been adjusted by the Indexed Rate Adjustment Factor as set forth herein.

#### **C. City Payments Pass Through Component**

The City Payments Component shall be escalated, if at all, in the same percentage as any change in the City Payments expense as required by the City. The actual payment for the current Contract Year shall be multiplied by the percentage change to determine the payment increase. The payment increase shall be divided by the total inbound City Covered Material Tonnage to calculate the per Ton increase. The per Ton increase shall be added to each of the Gate Rates listed in Exhibit 1 of this Agreement.

#### **D. City Tonnage Pass-Through Component**

The City Tonnage Component shall be adjusted to account for any change in the number of Tons of City Delivered Material allowed to be delivered to the Facility at no charge, as set forth in Section 4.4.5 of this Agreement, between the current Contract Year and the Upcoming Contract Year. The adjustment shall be calculated in the following manner.

1. Obtain the estimated Tons of City Delivered Material to be delivered to the Facility for the Upcoming contract Year from the City in accordance with Section 4.4.5 of this Agreement..
2. Calculate the change in Tons of City Delivered Material by subtracting the estimated Tons of City Delivered Material for the current Contract year from the estimated Tons of City Delivered Material to be delivered to the Facility in the upcoming Contract Year.
3. Calculate the cost of additional Tons of City Delivered Material by multiplying the change in the Tons of City Delivered Material from C. 2. above by the MMW rate after taking into account the Index Gate Rate Adjustment Factor and all other Pass-Through adjustments.
4. Calculate the per Ton City Tonnage Pass-Through Adjustment by dividing the cost of additional Tons of City Delivered Material by the estimated Tons of MMW to be delivered to the Facility by the City's Collection Franchisee in the upcoming Contract Year. The estimated

Tons of MMW to be delivered to the Facility by the City's Collection Franchisee in the upcoming Contract Year shall be estimated by the Contractor based on historical and current information and trends and approved by the City, which approval shall not be unreasonable withheld.

5. The per Ton City Tonnage Pass-Through Component adjustment shall be applied to the MMW rate after the rate has been adjusted by the Indexed Rate Adjustment Factor and all other pass-through adjustments as shown in the Gate Rate Adjustment Template below.

Tracy Material Recovery and Solid Waste Transfer, Inc. Gate Rate Adjustment Template					
Indexed Gate Rate Adjustment Factors					
Component	Annual Values		Index	Component Adjustment	Indexed Adjustment Factor
	Contract Years 1-5	Weight			
Labor	\$ 3,728,000	26.65%	Weighted Actual Change	4.81%	1.28%
Health and Welfare	\$ 677,000	4.84%	Weighted Actual Change	6.69%	0.32%
Workers Compensation	\$ 272,000	1.94%	Weighted Actual Change	-17.56%	-0.34%
Contract Labor	\$ 285,000	2.04%	Actual Change	4.02%	0.08%
Fuel	\$ 653,500	4.67%	PPI #@ Diesel	-31.09%	-1.45%
Other Operating Expense	\$ 2,430,000	17.37%	CPI U SF Oak SJ	2.86%	0.50%
Operating Profit	\$ 878,675	6.28%	CPI U SF Oak SJ	2.86%	0.18%
Depr & Amort	\$ 980,000	7.01%	CPI U SF Oak SJ	2.86%	0.20%
Disposal	\$ 4,074,650	29.13%	Pass-through	0.00%	0.00%
Agency Fees	\$ 8,300	0.06%	Pass-through	0.00%	0.00%
City Payments	\$ -	0.00%	Pass-through	0.00%	0.00%
<b>Total</b>	<b>\$ 13,987,125</b>	<b>100.00%</b>	<b>Indexed Adjustment Factor</b>	<b>0.77%</b>	

Pass-Through and Extraordinary Gate Rate Adjustment Factors and Adjusted Gate Rates										
	Current Gate Rates	\$ Index Adjustment <sup>(1)</sup>	Index Adjusted Gate Rate	Disposal Pass-Through	Agency Fee Pass-Through	City Fee Pass-Through Component	City Tonnage Pass-Through	Pass-Through Adjusted Gate Rates	Extraordinary Adjustments	Adjusted Gate Rates
Mixed Municipal Waste	\$ 115.65	\$ 0.89	\$ 116.54	\$ 1.23	\$ 0.00	\$ 0.00	\$ 0.53	\$ 118.31	\$ 0.00	\$118.31
Green Waste	\$ 67.00	\$ 0.52	\$ 67.52		\$ 0.00	\$ 0.00		\$ 67.52	\$ 0.00	\$67.52
Wood	\$ 67.00	\$ 0.52	\$ 67.52		\$ 0.00	\$ 0.00		\$ 67.52	\$ 0.00	\$67.52
Food Waste	\$ 115.65	\$ 0.89	\$ 116.54		\$ 0.00	\$ 0.00		\$ 116.55	\$ 0.00	\$116.55
Construction & Debris	\$ 115.65	\$ 0.89	\$ 116.54		\$ 0.00	\$ 0.00		\$ 116.55	\$ 0.00	\$116.55

Notes  
(1) - The \$ Index Adjustment is calculated by multiplying each "Current Gate Rate" by the "Indexed Adjustment Factor"





**EXHIBIT 3 SAMPLE CALCULATION OF FACILITY AND CCPR DIVERSION STANDARDS**

<b>Table 1 - Calculation of Compliance with Facility Diversion Standard (Section 4.6.1)</b>	
A- Contract Year Covered Material, except for Mixed Municipal Waste Delivered to the Facility Reported per Article 12. (Tons)	27,144
B - Organic Material Shrinkage (Tons)	(8,470)
C - Contract Year Adjusted Covered Material, except for Mixed Municipal Waste Delivered to the Facility (Tons)	18,674
D - Tons Diverted Reported per Article 12	15,686
E - Prior Year Facility Diversion Standard (82% in Contract Year 2017 and annually thereafter no less than 2 percentage points lower than the actual Facility Diversion Standard from the prior Contract Year (Section 4.6.1.)	82.0%
Compliance = D Divided by C (Must be no less than 2 percentage points lower than E.	84.0%

<b>Table 2 CCPR Diversion Standard</b>			
<b>CCPR Characterization Sample Studies</b>		<b>Bi-Annual Processing Diversion Studies</b>	
<b>Contract Year Study No. 1</b>		<b>Contract Year Study No. 1</b>	
Sample Total (lbs.)	1,500	Sample Total (lbs.)	5,000
CCPR materials that are Recyclable Materials	1,100	CCPR materials diverted through Processing	3,300
Result	73.3%	Result	66.0%
<b>Contract Year Study No. 2</b>		<b>Contract Year Study No. 2</b>	
Sample Total (lbs.)	1,350	Sample Total (lbs.)	5,100
CCPR materials that are Recyclable Materials	1,000	CCPR materials diverted through Processing	3,500
Result	74.1%	Result	68.6%
<b>Average of Annual CCPR Sample Studies</b>		<b>Average of Annual Processing Diversion Studies</b>	
Section 4.6.2.1 Percentage of CCPR materials that are Recyclable Materials	73.7%	Section 4.6.2.2 Percentage of CCPR materials that are Diverted through Processing	67.3%

<b>Section 4.6.2.3 Calculation of Compliance with CCPR Diversion Standard</b>	
A- Contract Year City Curbside Program Recyclables Delivered to the Facility (Tons)	6,130
B - Available Recyclable Material Based on CCPR Sample Studies (Tons)(6,130 x 73.7%)	4,517
C - Diverted Recyclable Material Based on Processing Diversion Studies (Tons) (6,130 x 67.3%)	4,127
Compliance = C Divided by B (Must be at least 88%) (Section 4.6.2.3)	91.4%



**EXHIBIT 4 APPROVED SUBCONTRACTORS AND AFFILIATES**

No Subcontractors have been approved by the City for the Contract Year Ended December 31, 2017.

Name of Company/Firm	Address	Area of Responsibility

**EXHIBIT 5 LIQUIDATED DAMAGES**

<b>Performance Area No. 1: Operations</b>	
1.	<u>Facility Diversion Activities.</u> Failure to conduct the Approved Processing Facilities Diversion program studies specified in this Agreement: \$100.00 per incident per day
2.	<u>Discourteous Behavior.</u> For each occurrence of discourteous behavior by a Contractor or Subcontractor employee reported by a user of the Facility with sufficient detail to reasonably describe the incident: \$150.00 per incident
3.	<u>Unauthorized Hours.</u> For each occurrence of Contractor's failure to operate the Approved Trans-Load Facility during receiving hours specified in this Agreement: \$250.00 per hour(assess in 15-minute increments)
4.	<u>Vehicle Non-compliance.</u> Failure to have a vehicle properly licensed, registered and inspected: \$500.00 per Day per incident
5.	<u>Invalid Driver License.</u> Failure to have a vehicle driver properly licensed: \$500 per incident or \$100 per Day, whichever is greater
6.	<u>Mixing of Material Types.</u> For each Load of Recyclable Materials that is Transported by Contractor in a vehicle with a different material type resulting in a mixing of one or more material types (e.g. mixing Recyclable Materials with Solid Waste or Organic Materials): \$500.00 per Load
7.	<u>Unauthorized Facilities.</u> For each individual occurrence of delivering Recyclable Materials to a Facility other than the Approved Recyclable Materials Processing Facility or delivering Residue to a Facility other than the Designated Disposal Facility: \$500.00 per Ton
8.	<u>Unauthorized Disposal.</u> For each individual occurrence of Disposal rather than Processing and Marketing of Recyclable Materials: \$500.00 per Ton
<b>Performance Area No. 2: Reporting and Other Requirements</b>	
1.	<u>Late Reporting.</u> For each Day after a due date as specified in this Agreement, that any monthly report or other report other than an annual report is submitted: \$100.00
2.	<u>Late Annual Reporting.</u> For each Day after a due date as specified in this Agreement, that any annual report is submitted: \$500.00
3.	<u>Incomplete Records.</u> For each occurrence of CITY requesting information required to be maintained by Contractor where Contractor fails to provide such information: \$500.00 per event



4. Incomplete or Inaccurate Information. For each occurrence of Contractor providing misleading or otherwise inaccurate information or reporting to CITY under or in regard to this Agreement. (Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance.): \$500.00 per event

By placing designee's initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of Liquidated Damage provisions of the time that the Agreement was made.

City

Initial Here: LL

Contractor

Initial Here: MR



**EXHIBIT 6  
PER ITEM RATE MATERIALS**

**Appliances**

Large and Small including Refrigerators, Freezers and Air Conditioners

**E-Waste**

CRTs, TVs, Monitors - no charge (limit 5 per day)

DVD, VCR, Computers, Printers, Fluorescent Light Bulbs

**Tires**

Auto, Motorcycle, Truck and Tractor

**Sharps**

Syringes, Needles, and Lancets accepted in Biohazard Sharps Containers at the Office Only

**Other Miscellaneous Items**

Batteries, Used Oil Filters

Oil & Coolant - no charge (limit 5 gallons per day)

Mattresses



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
1/5/2017

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

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

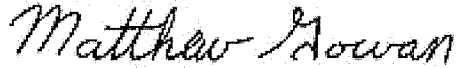
<b>PRODUCER</b> Alliant Insurance Services, Inc. 2180 Harvard St Ste 460 Sacramento CA 95815	<b>CONTACT NAME:</b> Joan Crossley <b>PHONE (A/C, No, Ext):</b> (916) 643-2708 <b>E-MAIL ADDRESS:</b> jcrossley@alliant.com	<b>FAX (A/C, No):</b> (916) 643-2750
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> TRACMAT-01 Tracy Material Recovery Facility & Solid Waste Transfer, Inc. P.O. Box 93 Tracy CA 95378	<b>INSURER A:</b> INDEMNITY INS CO OF NORTH AMER	<b>NAIC #</b> 43575
	<b>INSURER B:</b> ACE Fire Underwriters Ins Co	20702
	<b>INSURER C:</b> Rockhill Insurance Company	28053
	<b>INSURER D:</b> Great American Ins Co	16691
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**                      **CERTIFICATE NUMBER: 23396480**                      **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y		D37606893	4/27/2016	4/27/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y		H0878923A	4/27/2016	4/27/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$			FF01661600	4/27/2016	4/27/2017	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N	N/A			PER STATUTE    OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
D	EXCESS LIABILITY OCCURRENCE FORM			TUE123051800	4/27/2016	4/27/2017	\$10,000,000    Each Occurrence \$10,000,000    Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
CITY OF TRACY, ITS ELECTIVE AND APPOINTIVE BOARDS, COMMISSIONS, OFFICIALS, EMPLOYEES, AGENTS AND VOLUNTEERS ARE ADDITIONAL INSURED ON GENERAL LIABILITY AND AUTO LIABILITY RE: AGREEMENT FOR MATERIAL ACCEPTANCE, PROCESSING AND TRANSFER SERVICES. THIS INSURANCE IS PRIMARY.

<b>CERTIFICATE HOLDER</b>  CITY OF TRACY FINANCE DIRECTOR 333 CIVIC CENTER PLAZA TRACY CA 95376	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

© 1988-2014 ACORD CORPORATION. All rights reserved.

POLICY NUMBER: SVRD37606893

**ADDITIONAL INSURED -- WHERE REQUIRED UNDER CONTRACT OR AGREEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**This endorsement modifies insurance provided under the following:**

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Section II – Who is an Insured, 1., is amended to add as an additional insured:

- (f) Any person or organization to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of your operations or premises owned by or rented by you. However, the insurance provided will not exceed the lessor:
1. The coverage and/or limits of this policy, or
  2. The coverage and/or limits required by said contract or agreement.

---

Authorized Agent

POLICY NUMBER: SVRD37606893

**NON-CONTRIBUTORY ENDORSEMENT FOR ADDITIONAL INSUREDS**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
COMMERCIAL GENERAL LIABILITY COVERAGE**

Schedule

Organization

Additional Insured Endorsement

Where required by written contract or agreement

*(If no information is filled in, the schedule shall read: "All persons or entities added as additional insureds through an endorsement with the term "Additional Insured" in the title")*

For organizations that are listed in the Schedule above that are also an Additional Insured under an endorsement attached to this policy, the following is added to Section IV.4.a:

If other insurance is available to an insured we cover under any of the endorsements listed or described above (the "Additional Insured") for a loss we cover under this policy, this insurance will apply to such loss on a primary basis and we will not seek contribution from the other insurance available to the Additional Insured.

---

Authorized Agent



## AUTOMATIC ADDITIONAL INSURED ENDORSEMENT

Named Insured TRACY MATERIAL RECOVERY FACILITY & SOLID WASTE TRANSFER, INC			Endorsement Number
Policy Symbol CAL	Policy Number H0878923A	Policy Period 04/27/2016 TO 04/27/2017	Effective Date of Endorsement 04/27/2016
Issued By (Name of Insurance Company) ACE Fire Underwriters Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

### THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**This endorsement modifies insurance provided under the following:**

**BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM**

**SECTION II - LIABILITY COVERAGE, WHO IS AN INSURED** is amended to include as an "insured" any person or organization you are required in a written contract or agreement to name as an Additional Insured on your policy but only for "bodily injury" or "property damage" to which this insurance applies if the "accident" is caused by:

1. You, while using a covered "auto" or
2. Any other person, while using a covered "auto" with your permission.

The insurance provided by this endorsement shall be subject to the following additional condition:

1. The Limit of Insurance provided for the Additional Insured shall not be greater than those required by contract and, in no event, shall the policy Limits of Insurance be increased by the contract.
2. All insuring agreements, exclusions, terms and conditions of the policy shall apply to the coverage (s) provided to the Additional Insured, and such coverage shall not be enlarged or expanded by reason of the contract.
3. Coverage provided by this endorsement shall be excess over any other valid and collectible insurance available to the Additional Insured (s) whether primary, excess, contingent or on any other basis unless the contract specifically requires that this insurance be primary or you request that it apply on a primary basis prior to loss.

---

Authorized Representative



TRACDEL-01

RFAZELI

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

9/26/2016

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

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

PRODUCER License # 0G66614  
One Risk Group, LLC DBA: One Risk Management & Insurance Services  
5976 W. Las Positas Blvd., Suite 100  
Pleasanton, CA 94588

CONTACT NAME: John Shaver, CLCS, CISR

PHONE (A/C, No, Ext): (925) 226-7373

FAX (A/C, No): (925) 226-7393

E-MAIL ADDRESS: jshaver@oneriskgroup.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A : Insurance Company of the West

27847

INSURER B :

INSURER C :

INSURER D :

INSURER E :

INSURER F :

INSURED

Tracy Delta Solid Waste Management Inc.  
Tracy Material Recovery and Solid Waste Transfer, Inc.  
P.O. Box 274  
Tracy, CA 95378

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE	\$
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$
							GENERAL AGGREGATE	\$
							PRODUCTS - COM/POP AGG	\$
								\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	WPL503132901	10/01/2016	10/01/2017	X PER STATUTE	OTH-ER
							E. L. EACH ACCIDENT	\$ 1,000,000
							E. L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E. L. DISEASE - POLICY LIMIT	\$ 1,000,000

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

## CERTIFICATE HOLDER

## CANCELLATION

City of Tracy  
ATTN: Insurance Compliance  
Daniel Sodergren  
333 Civic Center Plaza  
Tracy, CA 95376

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

AUTHORIZED REPRESENTATIVE

© 1988-2014 ACORD CORPORATION. All rights reserved.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
1/5/2017

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

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


<b>PRODUCER</b> Alliant Insurance Services, Inc. 2180 Harvard St Ste 460 Sacramento CA 95815	<b>CONTACT NAME:</b> Joan Crossley <b>PHONE (A/C, No, Ext):</b> (916) 643-2708 <b>FAX (A/C, No):</b> (916) 643-2750 <b>E-MAIL ADDRESS:</b> jcrossley@alliant.com
	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Travelers Casualty & Surety Co <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>

**COVERAGES**                      **CERTIFICATE NUMBER:** 744063872                      **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE	\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE	\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE	OTH-ER
A	<b>CRIME</b> \$1,000,000 EMPLOYEE THEFT \$15,000 DEDUCTIBLE			105603911	4/27/2016	4/27/2017	\$1,000,000 \$1,000,000 \$1,000,000	ON PREMISES IN TRANSIT FORGERY/ALTERATIO-N

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

<b>CERTIFICATE HOLDER</b>  CITY OF TRACY FINANCE DIRECTOR 333 CIVIC CENTER PLAZA TRACY CA 95376	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
--	--

© 1988-2014 ACORD CORPORATION. All rights reserved.