

**CARSON CITY**

**FINAL DRAFT**

**COLLECTION SERVICES FRANCHISE AGREEMENT**

Executed Between CARSON CITY

and

Waste Management of Nevada, Inc.

This \_\_\_\_\_ day of Month, 20\_\_

**LATE MATERIAL**

**Item #: 23**

**Meeting Date: 12/20/18**

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This Collection Service Franchise Agreement, hereinafter referred to as "Agreement," is made and entered into this \_\_ day of MONTH, 20\_\_, by and between Carson City, a consolidated municipality and political subdivision of the State of Nevada, hereinafter referred to as "CITY," and Waste Management of Nevada, Inc., a private corporation lawfully authorized to conduct business in the State of Nevada, hereinafter referred to as "CONTRACTOR." In this Agreement, the CITY and CONTRACTOR may be collectively referred to as the "Parties" and individually referred to as "Party."

## RECITALS

**WHEREAS;** this Agreement is entered into between the Parties heretofore named for the purpose of implementing a franchise for the Collection of Solid Waste, and defining the rights and obligations of the Parties;

**WHEREAS;** the CITY is a consolidated municipality and has authority under Nevada Revised Statutes ("NRS") 244.187(3) & NRS 268.081(3) to displace or limit competition for the Collection and Disposal of Solid Waste to provide adequate, economical and efficient services to the inhabitants of Carson City and to promote the general welfare of those inhabitants, and by granting this exclusive franchise intends to limit competition in the Collection of Solid Waste for the purpose of providing adequate, economical and efficient services to the residents of the CITY and to promote the general welfare of its residents;

**WHEREAS;** CONTRACTOR is a private entity that provides certain services in the solid waste industry and which is capable of providing the CITY with Solid Waste handling services, and has further represented and warranted to the CITY that it has the requisite experience, responsibility, and qualifications to provide to the CITY's residents and commercial institutions services for the Collection, safe transport and permanent Disposal of all Solid Waste within the CITY;

**WHEREAS;** the CITY hereby declares its intention of maintaining reasonable rates for reliable, proven Collection, transportation and Disposal of Solid Waste within the CITY;

**WHEREAS;** the CITY further declares its intent to approve and maintain the Maximum Service Rates for the Collection, transportation, Processing, Recycling, Composting, and/or disposal of Solid Waste; and;

**WHEREAS;** the Parties desire to enter into a wholly exclusive Agreement for the provision of Collection Services except as otherwise specifically provided or limited in this Agreement; and,

**WHEREAS;** this Agreement has been developed by and is mutually agreed to be satisfactory to the CITY and the CONTRACTOR,

**NOW, THEREFORE,** for and in consideration of the covenants and agreements herein contained and for other valuable consideration, the receipt of which is hereby specifically acknowledged, the Parties do hereby agree as follows:



## **ARTICLE 1: DEFINITIONS**

For the purpose of this Agreement, the definitions contained in this Article shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Agreement, the definition of such word or phrase as contained in the Carson City Municipal Code of Ordinances shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender.

### **1.1 AFFILIATE**

“Affiliate” means all businesses, including, without limitation, corporations, limited and general partnerships and sole proprietorships, that are directly or indirectly related to the CONTRACTOR by virtue of direct or indirect ownership interest or common management. Such businesses shall be deemed to be “Affiliated with” the CONTRACTOR and included within the term “Affiliates” as used herein. An Affiliate includes: (i) a business in which the CONTRACTOR has a direct or indirect ownership interest; (ii) a business that has a direct or indirect ownership interest in the CONTRACTOR; and/or (iii) a business that is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in the CONTRACTOR. For the purposes of this definition, “ownership” means ownership as defined in the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the Effective Date, provided that ten percent (10%) shall be substituted for fifty percent (50%) in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest of value that the ownership interest represents.

### **1.2 AGREEMENT**

“Agreement” means this Agreement between the CITY and the CONTRACTOR, including all exhibits, and any future amendments hereto.

### **1.3 AGREEMENT YEAR**

“Agreement Year” means each twelve (12) month period from July 1st to June 30th, beginning July 1, 2019.

### **1.4 ALTERNATIVE DAILY COVER (ADC)**

“Alternative Daily Cover” or “ADC” means materials placed on the surface of the active face of the refuse fill area at the end of each operating day to control vectors, fires, odor, blowing litter and scavenging.

### **1.5 APPLICABLE LAW**

“Applicable Law” means all federal, state and local laws and regulations adopted thereto, including, without limitation, Environmental Law and any other regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, transportation, Processing

or Disposal of Discarded Materials that are in force on the Effective Date and as may be enacted, issued or amended during the Term of this Agreement.

#### **1.6 APPROVED DISPOSAL FACILITY**

“Approved Disposal Facility” means the Carson City Sanitary Landfill or such other disposal facility directed by the CITY, which is fully permitted and in compliance with all applicable federal, state and local laws and regulations adopted thereto governing such disposal.

#### **1.7 APPROVED FACILITY**

“Approved Facility” means any one of or any combination of the: Approved Disposal Facility; Approved Organic Materials Processing Facility; Approved Recyclable Materials Processing Facility; and/or Approved Transfer Station.

#### **1.8 APPROVED ORGANIC MATERIALS PROCESSING FACILITY**

“Approved Organic Materials Processing Facility” means the Nevada Compost located in Carson City, Nevada.

#### **1.9 APPROVED RECYCLABLE MATERIALS PROCESSING FACILITY**

“Approved Recyclable Materials Processing Facility” means the Waste Management Eco Center Campus located in Reno, Nevada.

#### **1.10 BIN**

“Bin” means a metal or plastic Container, with a capacity of one (1) cubic yard up to, and including, eight (8) cubic yards, designed or intended to be mechanically dumped into a loader packer type truck that is approved for such purpose by the CITY. Bins may also include Compactors that are owned by the Multi-Family Dwelling (MFD) or Commercial Service Unit wherein the MFD or Commercial Collection Service occurs.

#### **1.11 BIOHAZARDOUS OR BIOMEDICAL WASTE**

“Biohazardous” or “Biomedical Waste” means Discarded Materials which are likely to be infectious, pathological or biohazardous, originating from residences, hospitals, public or private medical clinics, departments of research laboratories, pharmaceutical industries, blood banks, forensic medical departments, mortuaries, veterinary facilities and other similar facilities, including, without limitation, equipment, instruments, utensils, fomites, laboratory wastes, including, without limitation, pathological specimens and fomites attendant thereto, surgical facilities, equipment, bedding and utensils, including, without limitation, pathological specimens and disposal fomites attendant thereto, sharps , including without limitation, hypodermic needles, and syringes, dialysis unit waste, chemotherapeutic waste, animal carcasses, offal and body parts, biological materials, including, without limitation, vaccines and medicines, and other similar materials, but excluding any such Discarded Materials which are reasonably determined by the CONTRACTOR to be noninfectious, non-pathological and non-biohazardous.

#### **1.12 BOARD**

“Board” means the Carson City Board of Supervisors.

### **1.13 BULKY ITEM**

“Bulky Item” means discarded appliances, furniture, tires, carpets, mattresses, and similar large items that require special Collection due to their size or nature, but can be Collected without the assistance of special loading equipment such as forklifts or cranes and without violating vehicle load limits. Up to a total of six (6) ~~3235~~-gallon or smaller bags, small boxes and/or bundles of Solid Waste, none of which may be greater than 3’ x 3’ x 3’ or weigh more than 50 pounds, constitute a single Bulky Item.

### **1.14 BULKY ITEM COLLECTION SERVICE**

“Bulky Item Collection Service” means the periodic on-call Collection of Bulky Items by the CONTRACTOR in the Service Area and the delivery of those Bulky Items to the Approved Facility.

### **1.15 BUSINESS DAYS**

“Business Days” mean days during which the CITY’s offices are normally open to do business with the public.

### **1.16 CART**

“Cart” means a heavy plastic receptacle and a rated capacity of at least thirty-two (32) gallons and not more than ninety-six (96) gallons, having a hinged, tight-fitting lid and wheels, that is approved by the Contract Administrator for use by Service Recipients for Collection Services under this Agreement.

### **1.17 CHANGE IN LAW**

“Change in Law” means the following events or conditions that may have a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement:

- a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or,
- b. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the CITY or of the CONTRACTOR, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

### **1.18 CITY**

“CITY” means either the area within the corporate boundaries of Carson City or the legal entity organized as a consolidated municipality, depending on the context.

### **1.19 CITY CLEAN-UP SERVICE**

“CITY Clean-up Service” means the Collection of Solid Waste, Green Waste, Recyclable Materials and Bulky Items by the CONTRACTOR resulting from written or verbal requests from the CITY for temporary clean-up programs at a centralized collection site. Such service shall include the provision of Bins or Roll-Off Boxes by the CONTRACTOR and the transport and delivery of the Collected materials to the appropriate Approved Facility.

## **1.20 CITY CONTAINER SERVICE**

“CITY Container Service” means the Collection of Solid Waste and Recyclable Materials from City Containers and the transport and delivery of the Collected materials to the appropriate Approved Facility.

## **1.21 CITY SERVICE UNIT**

“CITY Service Unit” means those CITY properties or CITY locations which the Contract Administrator requests that the CONTRACTOR provide services as provided in this Agreement.

## **1.22 CITY WASTE**

“CITY Waste” means Solid Waste, Recyclable Materials, Green Waste, Organic Materials and Bulky Items generated at a CITY Service Unit.

## **1.23 COLLECT, COLLECTED, COLLECTION**

“Collect,” “Collected” or “Collection” means the act of the CONTRACTOR taking physical possession of, and removing Discarded Materials, whether by manual, semi-automated or automated means, and transporting such materials to the Approved Facility, pursuant to this Agreement.

## **1.24 COMMERCIAL SERVICE WORK DAY**

“Commercial Service Work Day” means any day Monday through Saturday.

## **1.25 COMMENCEMENT DATE**

“Commencement Date” means the date specified in Article 3.1 when the CONTRACTOR is to begin providing Collection and related services required by this Agreement.

## **1.26 COMMERCIAL, COMMERCIAL SERVICE UNIT**

“Commercial” or “Commercial Service Unit” means all retail, professional, office, wholesale and industrial facilities, and/or other Commercial enterprises offering goods or services to the public, excluding businesses conducted upon any Residential Property; organizations; and agencies other than CITY agencies.

## **1.27 COMMERCIAL WASTE**

“Commercial Waste” means Solid Waste, Recyclable Materials, Green Waste, Organic Materials and Bulky Items generated at a Commercial Service Unit.

## **1.28 COMPACTOR, COMPACTION**

“Compactor,” or “Compaction” means a mechanical apparatus that compresses materials, the Container that holds the compressed materials, and/or the process of compressing materials or holding compressed materials. Compactors include Bin Compactors of any size serviced by front-loading Collection vehicles and Compactors of any size serviced by Roll-Off Box Collection vehicles.

### **1.29 COMPOST**

“Compost” means the resulting material from Composting, which does not include residue.

### **1.30 COMPOSTING**

“Composting” means the controlled or uncontrolled biological decomposition of organic constituents.

### **1.31 CONSTRUCTION AND DEMOLITION DEBRIS (C&D)**

“Construction and Demolition Debris” or “C&D” mean materials resulting from construction, renovation, remodeling, repair, or demolition operations relating to or resulting from a building, structure, pavement or other improvement, including, without limitation, concrete, brick, bituminous concrete, rubble, wood and masonry, composition roofing and roofing paper, steel, and other metals such as copper. “Construction and Demolition Debris” or “C&D” also includes, without limitation, rocks, soils, tree remains and other Green Waste which results from land clearing or land development operations in preparation for construction.

### **1.32 CONTAINERS**

“Containers” mean Bins, Carts, Compactors, and Roll-Off Boxes.

### **1.33 CONTRACTOR**

“CONTRACTOR” means Waste Management of Nevada, Inc.

### **1.34 CONTRACT ADMINISTRATOR**

“Contract Administrator” means the Operations Manager, or any subsequent Person, or his or her designee, designated by the CITY to administer and monitor the provisions of this Agreement.

### **1.35 CONTRACTOR COMPENSATION**

“CONTRACTOR Compensation” means the monetary compensation received by the CONTRACTOR in return for providing services in accordance with this Agreement as described in Article 10.

### **1.36 CONTRACTOR’S PROPOSAL**

“CONTRACTOR’s Proposal” means the proposal submitted to the CITY by the CONTRACTOR on August 21, 2018 for the provision of Solid Waste, Recyclables, and Organic Materials services and certain supplemental written materials.

### **1.37 CUSTOMER**

“Customer” means the Person to whom the CONTRACTOR submits its billing invoice and collects payment from for Collection services provided to a Premises. The Customer is not necessarily the owner of the Premises and may be either the Person who occupies the Premises or the owner of the Premises.

### **1.38 DAY**

“Day” means calendar day unless otherwise specified in this Agreement.

### **1.39 DISCARDED MATERIALS**

“Discarded Materials” means Solid Waste, Recyclable Materials, Organic Materials, and C&D placed by a Generator in a receptacle and/or at a location for the purposes of Collection by the CONTRACTOR, excluding Exempt Waste.

### **1.40 DISPOSAL**

“Disposal” or “Disposed” mean the ultimate disposition of unprocessed Solid Waste intended for Disposal, and Residue.

### **1.41 DISPOSAL FACILITY**

“Disposal Facility” means the Carson City landfill.

### **1.42 DWELLING UNIT**

“Dwelling Unit” means any individual living unit in a Single-Family Dwelling (SFD) or Multi-Family Dwelling (MFD) structure or building intended for, or capable of being utilized for, residential living other than a hotel or motel.

### **1.43 EFFECTIVE DATE**

“Effective Date” means the date on which the last of the Parties signs this Agreement.

### **1.44 ELECTRONIC WASTE, E-WASTE**

“Electronic waste” or “E-Waste” means discarded electronic equipment including, without limitation, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals, 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.

### **1.45 ENVIRONMENTAL LAWS**

“Environmental Laws” means all local, state and federal laws and regulations adopted pursuant thereto, including, without limitation, county and CITY ordinances concerning public health, safety and the environment as currently in force or as hereafter amended.

### **1.46 EXEMPT WASTE**

“Exempt Waste” means Hazardous Substances, Hazardous Waste, Biohazardous or Biomedical Waste, volatile, corrosive, biomedical, infectious, and toxic substances or material, waste that the CONTRACTOR reasonably believes would, as a result of or upon Disposal or receipt at the applicable facility, be a violation of local, state and federal laws and regulations adopted pursuant thereto, including, without limitation, ordinances and land use restrictions or conditions.

#### **1.47 FIXED BODY VEHICLE**

“Fixed Body Vehicle” means any wheeled vehicle that does not rely on a Roll-Off Box or other detachable Container to Collect, contain and transport material. Dump trucks shall be considered Fixed Body Vehicles.

#### **1.48 FOOD WASTE**

“Food Waste” means a subset of Organic Materials constituting: (i) all kitchen and table food waste scraps, and animal, or vegetable, fruit, grain, dairy or fish waste that attends or results from the storage, preparation, cooking or handling of foodstuffs, with the exception of animal excrement; and (ii) paper waste contaminated with putrescible material.

#### **1.49 GENERATOR**

“Generator” means any Person whose act or process produces Discarded Materials, or whose act first causes any of these items to become subject to regulation.

#### **1.50 GREEN WASTE**

“Green Waste” means any vegetative matter resulting from normal yard and landscaping maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in diameter which has been source separated by the Customer and set out for Green Waste Collection which except for such Source Separation and set out would have been processed or disposed of as Solid Waste. Green Waste includes plant debris, such as palm, yucca and cactus, ivy, grass clippings, leaves, pruning, weeds, branches, brush, holiday trees (without stands, flocking or ornamentation), and other forms of vegetative waste and must be generated by and at the Service Unit wherein the Green Waste is Collected. Green Waste does not include items herein defined as Exempt Waste.

#### **1.51 GROSS BILLINGS**

“Gross Billings” means total amount invoiced to Customers by the CONTRACTOR for the provision of services pursuant to this Agreement, without any deductions. Gross Billings do not include revenues from the sale of Recyclable Materials.

#### **1.52 HAZARDOUS SUBSTANCE**

“Hazardous Substance” means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as “Hazardous Substances” or hazardous material, Hazardous Waste, toxic waste, pollutant or toxic substances or similarly identified as hazardous to human health or the environment as defined by or pursuant to any related local, state or federal laws and regulations adopted pursuant thereto, currently existing or hereafter enacted; and, (b) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl’s (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

#### **1.53 HAZARDOUS WASTE**

“Hazardous Waste” means all substances defined as Hazardous Waste, has the meaning ascribed to it in [NRS 459.430](#), as may be amended, and any regulations adopted pursuant thereto, or identified and listed as

Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act regulations in Title 40 parts 239 through 282, all future amendments thereto, and all rules and regulations promulgated thereunder.

#### **1.54 HOLIDAYS**

“Holidays” means any Holidays observed by the CITY and/or State.

#### **1.55 HOME GENERATED SHARPS**

“Home-generated Sharps” means hypodermic needles, pen needles, intravenous needles, lancets and other devices that are used to penetrate the skin for the delivery of medications derived from a Residential Property.

#### **1.56 HOUSEHOLD BATTERIES**

“Household Batteries” means disposable or rechargeable dry cells such as those referred to as A, AA, AAA, B, C, D, 9-volt, button type or those from laptop computers or cell phones, and commonly used as power sources for consumer electronics devices, including but not limited to zinc oxide, nickel metal hydride, alkaline, mercury, silver oxide, lithium, lithium ion and carbon zinc, but excluding automotive lead acid batteries.

#### **1.57 HOUSEHOLD HAZARDOUS WASTE (HHW)**

“Household Hazardous Waste” or “HHW” means Hazardous Waste generated at an SFD or MFD Residential Property within the CITY. HHW includes, without limitation: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, batteries, Household Batteries, fluorescent bulbs, tubes, cleaners and sprays, and pesticides, fertilizers, and other garden products.

#### **1.58 LIQUIDATED DAMAGES**

“Liquidated Damages” means the amounts due by the CONTRACTOR for failure to meet specific quantifiable standards of performance as described in Article 12.6.

#### **1.59 MASTER BILLED COMMUNITY**

“Master Billed Community” means a parcel of real property on which more than one dwelling unit is located, where the owner of such parcel elects to receive from the CONTRACTOR, and will pay, single invoices for all Solid Waste Collection services at the parcel. However, Master-Billed Communities do not include multi-family complexes.

#### **1.60 MATERIALS RECOVERY FACILITY (MRF)**

“Materials Recovery Facility” or “MRF” means the designated Transfer Station(s) or any other Approved Facility, selected by the CONTRACTOR and approved by the CITY, or specifically designated by the CITY, designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Materials.



#### **1.61 MULTI-FAMILY, MULTI-FAMILY DWELLING (MFD), MULTI-FAMILY SERVICE UNIT**

“Multi-Family,” “Multi-Family Dwelling,” “MFD,” or “Multi-Family Service Unit” means any Residential Premises, other than a Single-Family Premises, with five (5) or more Dwelling Units used for Residential purposes, regardless of whether residence therein is temporary or permanent, that receive centralized Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address. MFD shall be deemed a Commercial service unit for the purposes of this Agreement.

#### **1.62 NON-COLLECTION NOTICE**

“Non-Collection Notice” means a form, as approved in advance by the CITY, used to notify a Service Recipient of the reason for the non-collection of materials set out by the Service Recipient for Collection by the CONTRACTOR pursuant to this Agreement.

#### **1.63 ORGANIC MATERIALS**

“Organic Materials” means those Green Waste and Food Waste which are specifically accepted at the Approved Organic Materials Processing Facility. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Solid Waste and Recyclable Material.

#### **1.64 ORGANIC MATERIALS PROCESSING FACILITY**

“Organic Materials Processing Facility” means the designated Organic Materials Processing Facility or such other facility selected by the CONTRACTOR and approved by the CITY, or specifically designated by the CITY, which is designed, operated and legally permitted for the purpose of receiving and processing Organic Materials including Green Waste and Food Waste.

#### **1.65 PARTY, PARTIES**

“Party” or “Parties” refers to the CITY and the CONTRACTOR, individually or together, as applicable.

#### **1.66 PERSON**

“Person” means any individual, firm, association, organization, partnership, corporation, trust, joint venture, or public entity.

#### **1.67 PREMISES**

“Premises” means any land or building in the Service Area where Solid Waste, Recyclable Materials, Organic Materials, or C&D are generated or accumulated.

#### **1.68 PROCESSING**

“Processing” means to sort, separate, prepare, treat, bale or otherwise package, Compost, cure, or to take other steps necessary to re-use materials at the Approved Facilities, or to remanufacture, reconstitute, and or create new products from Discarded Materials. Processing includes reuse, Recycling and Composting.

#### **1.69 RATE YEAR**

“Rate Year” means a 12-month period, beginning with the Commencement Date and concluding twelve (12) months later, for which the CONTRACTOR’s Compensation is calculated.

#### **1.70 RECYCLABLE MATERIALS**

“Recyclable Materials” has the meaning ascribed to it in [NRS 444A.013](#) and means solid waste that can be processed and returned to the economic mainstream in the form of raw materials or products, as determined by the State Environmental Commission. For purposes of this Agreement, Recyclable Materials are set forth in Exhibit 5 attached hereto, and expressly incorporated herein by reference.

#### **1.71 RECYCLE, RECYCLING**

“Recycle” or “Recycling” means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise be disposed of in a landfill, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

#### **1.72 RECYCLING DROP-OFF SITE**

“Recycling Drop-Off Site” refers to the CONTRACTOR operated Recycling Drop-Off Site at the Carson City Sanitary Landfill, 3600 Flint Drive, Carson City, Nevada, and other locations as designated by the City.

#### **1.73 RESIDENTIAL, RESIDENTIAL PROPERTY**

“Residential,” or “Residential Property” means on, of or pertaining to property used for residential purposes, irrespective of whether such Dwelling Units are rental units or owner-occupied, or whether Commercial activities are conducted thereon or therefrom, provided that such Commercial activities are permitted under applicable zoning regulations and do not consist of the primary use of the property. For the purposes of this Agreement, each apartment, flat, or dwelling unit of a duplex, triplex, 4-unit or less apartment house, or 4-unit or less condominium complex shall be considered as a separate dwelling, unless the managers or residents of such a complex arrange for centralized disposal which shall be treated as a Commercial Entity.

#### **1.74 RESIDENTIAL SERVICE WORK DAY**

“Residential Service Work Day” means any day Monday through Friday.

#### **1.75 RESIDUE**

“Residue” means unrecoverable materials remaining after Processing Discarded Materials for which there are no other options for viable use and which therefore must be disposed of in a landfill.

#### **1.76 REUSABLE MATERIALS**

“Reusable Materials” means items that are capable of being used again after minimal Processing. Reusable Materials may be Collected Source Separated or recovered through a Processing Facility.

### **1.77 ROLL-OFF BOX**

“Roll-Off Box” mean open-top Containers with a typical capacity of eight (8) to forty (40) cubic yards that are serviced by a roll-off Collection vehicle.

### **1.78 SERVICE AREA**

“Service Area” means that area within the corporate limits of Carson City, Nevada.

### **1.79 SERVICE LEVEL**

“Service Level” means the size of a Customer’s Container and the frequency of Collection service.

### **1.80 SERVICE RECIPIENT**

“Service Recipient” means an individual, agency, organization or company receiving Collection Service pursuant to this Agreement.

### **1.81 SINGLE-FAMILY, SINGLE-FAMILY DWELLING (SFD), SINGLE-FAMILY SERVICE UNIT**

“Single-Family,” “Single-Family Dwelling,” “SFD,” or “Single-Family Service Unit” means, notwithstanding any contrary definition as set forth in Nevada Revised Statutes, Nevada Administrative Code or the Carson City Municipal Code, any detached or attached house or residence designed or used for occupancy by one (1) family, provided that Collection service feasibly can be provided to such Premises as an independent unit, and the owner or occupant of such independent unit is billed directly for the Collection service. “Single-Family,” “Single-Family Dwelling,” “SFD,” or “Single-Family Service Unit” includes Residential units of a duplex, tri-plex, or four-plex Residential structure provided that the owner or Occupant of each unit is separately billed for its specific Service Level.

### **1.82 SOLID WASTE**

“Solid Waste” has the meaning ascribed to it in [NRS 444.490](#) which definition includes all putrescible and non-putrescible refuse in solid or semisolid form, including, but not limited to, garbage, rubbish, junk vehicles, ashes or incinerator residue, street refuse, dead animals, demolition waste, construction waste, solid or semisolid commercial and industrial waste. The term does not include: (a) “hazardous” waste as that term is defined by [NRS 459.400](#) to [459.600](#), inclusive or (b) a vehicle described in subparagraph (2) of paragraph (b) of subsection 1 of [NRS 444.620](#).

### **1.83 SOURCE SEPARATED, SOURCE SEPARATION**

“Source Separated” or “Source Separation” means the segregation from Solid Waste, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse. A load of Source Separated Recyclable Materials that contains more than ten (10) percent non-Recyclable Materials shall not be considered source separated. A load of Source Separated Organic Materials that contains more than two (2) percent non-Organic Materials shall not be considered source separated.

**1.84 SPECIAL EVENT COLLECTION SERVICE**

“Special Event Collection Service” means the Collection of Solid Waste and Recyclable Materials as appropriate at CITY-sponsored special events.

**1.85 STATE**

“State” means the State of Nevada.

**1.86 SUBCONTRACTOR**

“Subcontractor” means any party who has entered into a contract, express or implied, with the CONTRACTOR for the performance of an act that is necessary for the CONTRACTOR’s fulfillment of its obligations for providing service under this Agreement. Vendors providing materials and supplies to the CONTRACTOR shall not be considered Subcontractors.

**1.87 TERM**

“Term” means the period of this Agreement, including extension periods if granted, as provided for in Article 3.

**1.88 TRANSFER STATION**

“Transfer Station” means a facility, selected by the CONTRACTOR and approved by the CITY, or specifically designated by the CITY, designed, operated and legally permitted for the purpose of receiving and transferring Solid Waste, Recyclable Materials including Green Waste and Food Waste, Bulky Items, and/or C&D Debris.

**1.89 UNIVERSAL WASTE**

“Universal Waste” means wastes, including, without limitation, Household Batteries, fluorescent light bulbs, and mercury switches.

**1.90 WHITE GOODS**

“White Goods” means discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.

**ARTICLE 2: REPRESENTATIONS AND WARRANTIES**

The Parties, by acceptance of this Agreement, represent and warrant the conditions presented in this Article.

## **2.1 CONTRACTOR'S CORPORATE STATUS**

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

## **2.2 CONTRACTOR'S CORPORATE AUTHORIZATION**

Each signatory of this Agreement represents and warrants that he or she has the full legal authority to execute and deliver the same on behalf of the Party for which the signatory is acting.

## **2.3 AGREEMENT WILL NOT CAUSE BREACH**

To the best of the CONTRACTOR's and the CITY's knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by either Party of their respective obligations hereunder does not conflict with, violate, or result in a breach: (i) of any Applicable Law; or (ii) 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 or any other local governmental entity is a party or by which the CONTRACTOR or any of its properties or assets are bound, or constitutes a default hereunder.

## **2.4 NO LITIGATION**

To the best of the CONTRACTOR's knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against any party wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

- Materially adversely affect the performance by the CONTRACTOR of its obligations hereunder;
- Adversely affect the validity or enforceability of this Agreement; or,
- Have a material adverse effect on the financial condition of the CONTRACTOR, or any surety or entity guaranteeing the CONTRACTOR's performance under this Agreement.

## **2.5 NO ADVERSE JUDICIAL DECISIONS**

To the best of the CONTRACTOR's and the CITY's knowledge after reasonable investigation, there is no judicial decision that would prohibit this Agreement or subject this Agreement to legal challenge.

## **2.6 NO LEGAL PROHIBITION**

To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law in effect on the date that Party signed this Agreement that would prohibit the performance of their respective obligations under this Agreement and the transactions contemplated hereby.

## **2.7 CONTRACTOR'S ABILITY TO PERFORM**

The CONTRACTOR warrants and guarantees that it possesses the business, professional, and technical

expertise to perform all services, obligations, and duties as described in and required by this Agreement, including all Exhibits thereto. The CONTRACTOR possesses the ability to secure equipment, facility, and employee resources required to perform its obligations under this Agreement.

## **2.8 CONTRACTOR'S INVESTIGATION**

The CONTRACTOR has made an independent investigation and analysis, the results of which are satisfactory to the CONTRACTOR, of the conditions and circumstances surrounding this Agreement, its content and preparation, and the work to be performed by the CONTRACTOR under this Agreement. This Agreement accurately and fairly represents the intentions of the CONTRACTOR, and the CONTRACTOR enters into this Agreement on the basis of that independent investigation and analysis.

## **2.9 STATEMENTS AND INFORMATION IN CONTRACTOR'S PROPOSAL**

The CONTRACTOR's Proposal and supplementary information submitted by the CONTRACTOR for the work to be performed by the CONTRACTOR under this Agreement do not contain any untrue statement of a material fact nor omit any material facts relevant to the ability of the CONTRACTOR to perform the work under this Agreement.

# **ARTICLE 3: TERM OF AGREEMENT**

## **3.1 INITIAL TERM**

The Term of this Agreement shall be for a period of fifteen (15) years beginning July 1, 2019 and terminating on June 30, 2034, unless sooner terminated in accordance with the terms provided herein.

## **3.2 EXTENSION OF INITIAL TERM**

On or before April 1, 2032 the Board may approve an offer to the CONTRACTOR in writing for a two (2) year extension of this Agreement for the period July 1, 2034 through June 30, 2036. Provision of such offer shall be at the sole discretion of the Board. The CONTRACTOR shall provide written notice to the CITY as to whether the CONTRACTOR accepts or rejects the CITY's offer within twenty (20) Residential Service Work Days of the date of the offer. If the CONTRACTOR fails to provide such notice to the CITY within said twenty (20) Residential Service Work Days, the CITY's offer shall be deemed withdrawn and the CITY shall have no obligation to extend the Term of this Agreement beyond June 30, 2034. If the Term of this Agreement is extended, the Maximum Service Rate provisions of Article 10 shall not be subject to negotiation. However, Maximum Service Rates shall be adjusted annually throughout the extended Term as provided in Article 10.

## **3.3 OTHER PROVISIONS**

The CITY may, at the end of the initial Term or optional extended Terms, as appropriate and at the sole discretion of the Board, either renegotiate the terms and conditions of this Agreement with the current CONTRACTOR or request proposals from qualified contractors to provide Collection Services.

## **ARTICLE 4: GRANT AND ACCEPTANCE OF EXCLUSIVE AGREEMENT**

### **4.1 GRANT AND ACCEPTANCE OF EXCLUSIVE AGREEMENT**

Except as otherwise provided in this Agreement, the CONTRACTOR is hereby granted and the CONTRACTOR hereby accepts the exclusive right to provide Collection Services within the Service Area. Only services expressly identified herein shall be exclusive to the CONTRACTOR. The term “exclusive” as used herein means that the CITY has exercised its authority under [NRS 268.081\(3\) & NRS 244.187\(3\)](#) to displace and limit all competition to provide adequate, economical and efficient services to the inhabitants of Carson City and to promote the general welfare of those inhabitants, so that the CONTRACTOR shall be the sole provider of Collection Services, including transport, Disposal, and Recycling services for Solid Waste and Recyclable Materials under this Agreement and under the Carson City Municipal Code of Ordinances.

### **4.2 LIMITATIONS TO THE SCOPE OF EXCLUSIVE AGREEMENT**

The following services and materials shall be excluded from the scope of this Agreement:

- A. Construction and Demolition Debris.** On-call C&D Debris Collection Service using a roll-off truck and roll-off box is open market and excluded from the scope of this Agreement;
- B. Recyclable Materials or Bulky Items.** Recyclable Materials or Bulky Items that are Source Separated from Solid Waste by a Service Recipient for which the waste Generator sells or is otherwise compensated by a collector in a manner resulting in a net payment to the waste Generator;
- C. Self-Hauled Materials.** Solid Waste, Recyclable Materials, Bulky Items, Green Waste, Organic Materials or C&D Debris which is removed from any SFD Service Unit, MFD Service Unit, Commercial Service Unit, or CITY Service Unit, and which is transported personally by the owner or occupant of such Premises (or by his or her full-time employees) to a Recycling, Processing or Disposal Facility;
- D. Source Separated Materials.** Recyclable Materials, Green Waste, Organic Materials or Bulky Items which are source separated at any Premises by the waste Generator and donated to youth, civic or charitable organizations;
- E. Materials Removed by Customer’s Contractor as Incidental Part of Services.** Solid Waste, Recyclable Materials, Organic Materials and/or Bulky Items removed from a Premise by a company (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential clean-out service) as an incidental part of the service being performed by the company where the company uses its own Fixed Body Vehicle and employees for the Collection and transportation of such materials;
- F. Source Separated White Goods, Bulky Items, etc.** Removal and transportation of White Goods, Bulky Items or other material as part of the services of providing a replacement item when such removal and transportation is provided by the vendor who sold the replacement item;
- G. Hazardous Waste.** Hazardous Waste regardless of its source; and,

- H. **CONTRACTOR Requested Solid Waste.** SFD Waste, MFD Waste, Commercial Waste or CITY Waste that are removed from a Premise by a company through the performance of a service that the CONTRACTOR has requested and received written permission from the Contract Administrator not to provide.

#### **4.3 EXCLUDED SERVICES**

The CONTRACTOR acknowledges and agrees that the CITY may permit other Persons besides the CONTRACTOR to Collect any and all types of materials excluded from the scope of this Agreement as set forth in Article 4 or not otherwise expressly identified herein, without seeking or obtaining approval of the CONTRACTOR.

#### **4.4 EXCLUSIVITY**

This Agreement is exclusive in nature, and neither the CITY nor its residents shall make or enter into any other agreement or arrangement for the Collection Services, including collection, transport, removal, disposal, or recycling of SFD, MFD, City or Commercial Solid Waste, Recyclable Materials or Organic Materials from within said CITY boundaries during the term of this Agreement, or of any extension or renewal thereof.

#### **4.5 ENFORCEMENT OF EXCLUSIVITY**

All residential premises, commercial and community activities of every kind and description that generate Solid Waste including Recyclable Materials or Organic Materials, shall be required by CITY to utilize the Collection Services of the CONTRACTOR provided for herein.

In the event the CONTRACTOR can produce pictorial evidence or other documentation that other Persons are servicing Collection Containers or are Collecting Solid Waste, Recyclable Materials, Organic Materials or Bulky Items in a manner that is not consistent with this Agreement, the CITY reasonably shall cooperate with the CONTRACTOR in the efforts of the CONTRACTOR to enforce its rights under this Agreement, except that the CITY is under no legal obligation to commence any action or proceeding to enforce any such rights as the result of third-party conduct, and is further not subject to any liability in law or equity for the conduct of any third-party.

#### **4.6 APPLICABLE LAW**

This Agreement and scope of this Agreement shall be interpreted to be consistent with Applicable Law, now and during the Term of this Agreement. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the CITY to lawfully contract for the scope of services consistent with the manner and consistent with all provisions as specifically set forth herein, the CONTRACTOR agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully included herein and that the CITY shall not be responsible for any lost profits or losses claimed by the CONTRACTOR to arise out of limitations to the scope or provisions of this Agreement set forth herein. In such an event, it shall be the responsibility of the CONTRACTOR to minimize the financial impact of such future judicial interpretations or new laws and the CONTRACTOR



may meet and confer with CITY and may petition for a rate adjustment pursuant to Article 10.

#### **4.7 OBLIGATIONS OF PARTIES**

In addition to the specific performance required under this Agreement, CITY and the CONTRACTOR shall:

- A.** Use their reasonable efforts to enforce the exclusiveness of this Agreement by the CONTRACTOR's identification and documentation of violations of this Agreement and the CITY's notification of Generators and Collection companies reasonably believed to be Collecting or allowing others to Collect Discarded Materials in a manner that is inconsistent with the terms of this Agreement.
- B.** Provide timely notice to one another of a perceived failure to perform any obligations under this Agreement and access to information demonstrating the Party's failure to perform.
- C.** Provide timely access to the Contract Administrator and the CONTRACTOR's designated representative and complete and timely responses to requests of the other Party.
- D.** Provide timely notice of matters which may affect either Party's ability to perform under this Agreement.

### **ARTICLE 5: SCOPE OF COLLECTION SERVICES**

#### **5.1 SUMMARY SCOPE OF SERVICES**

The CONTRACTOR or its Subcontractor(s) shall be responsible for the following:

- A.** Collecting Solid Waste, Recyclable Materials and Organic Materials generated by and placed for Collection by Customers of the CONTRACTOR's services pursuant to the requirements of Article 5.
- B.** Transporting Collected materials to the appropriate Approved Facilities pursuant to the requirements of Article 6;
- C.** Performing all other services required by this Agreement including, but not limited to, Customer billing, public education, Customer service, record keeping, and reporting pursuant to Article 8;
- D.** Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement;
- E.** Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, host fees, business and any other license fees, regulatory fees (including CITY fees or similar surcharges as applicable), and utilities; paying all expenses related to the operation, permitting, licensing, regulatory fees for all Approved Facilities owned/operated by the CONTRACTOR or the CONTRACTOR's Affiliate; paying for all expenses related to Changes in Law at Approved Facilities owned/operated by the CONTRACTOR or the CONTRACTOR's Affiliate; and, paying all expenses related to any

construction, any land or facility improvements, any repair and/or replacement of equipment and all other expected or unforeseen costs associated with all Approved Facilities owned/operated by the CONTRACTOR or the CONTRACTOR's Affiliate.

- F. Performing or providing all services necessary to fulfill its obligations in full accordance with this Agreement; and,
- G. Complying with all Applicable Laws.

The CONTRACTOR shall perform the work and provide the services pursuant to this Agreement in a thorough and professional manner so that the residents and businesses within the Service Area are provided reliable, courteous, and high-quality service at all times. The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not relieve the CONTRACTOR of the duty to perform all other tasks and activities necessary to fulfill its obligations under this Agreement, regardless of whether such requirements are enumerated elsewhere in this Agreement, unless excused in accordance with Article 12.7.

The CONTRACTOR shall not knowingly deliver materials Collected under this Agreement to facilities that do not comply in all material aspects with Applicable Law. The CONTRACTOR, and not the CITY, must use reasonable efforts to assure that all Disposal, transfer, and Processing facilities to which the CONTRACTOR delivers material under this Agreement are properly permitted to receive material Collected under this Agreement, except for any other facility that the CITY directs the CONTRACTOR to use. Failure to comply with this provision may result in the CONTRACTOR being in default under this Agreement.

## **5.2 USE OF APPROVED FACILITIES**

The CONTRACTOR, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Approved Facilities for the purposes of Processing and/or Disposing of all Solid Waste, Recyclable Materials, Organic Materials, and other materials Collected in the CITY. Such decision by the CONTRACTOR in no way constitutes a restraint of trade. If the CONTRACTOR or Affiliate owns and/or operates Approved Facility, all expenses associated with permitting, licensing, regulatory compliance, closure and post-closure, etc. and all other costs associated with the operation and ownership of the Approved Facility is the sole responsibility of the CONTRACTOR.

## **5.3 SUBCONTRACTING**

The CONTRACTOR shall not engage any Subcontractors for Collection, transportation, or Processing of Solid Waste, Recyclable Materials, or Organic Materials without the prior written consent of the Contract Administrator. If the CONTRACTOR plans to engage other affiliated or related party entities in the provision of services, the CONTRACTOR shall provide the Contract Administrator with thirty (30) days written notification of its plans and provide an explanation of any potential impacts related to the quality, timeliness, or cost of providing services under this Agreement. If a Subcontractor is needed in emergency circumstances, the Subcontractor will need to be approved by the CITY.

#### 5.4 RESPONSIBILITY FOR MATERIALS

Once Solid Waste, Recyclable Materials and Organic Materials are placed in the CONTRACTOR's Containers and at the Collection location, the responsibility for their proper handling shall transfer directly from the Generator to the CONTRACTOR, with the exception of Exempt Waste if the CONTRACTOR can identify the Generator. Once Solid Waste, Recyclable Materials and Organic Materials are deposited by the CONTRACTOR at the appropriate Approved Facility, such materials shall become the responsibility of the owner or operator of the Approved Facility with the exception of Exempt Waste. Responsibility for Exempt Waste that has been inadvertently Collected by the CONTRACTOR shall remain with the CONTRACTOR if it cannot identify the Generator, and the CONTRACTOR shall assume all responsibility for its proper Disposal.

#### 5.5 CITY-DIRECTED CHANGES TO SCOPE

Upon request of the CITY, the CITY may meet and confer with the CONTRACTOR to establish the scope of any additional services or modification to existing services (which may include use of Approved Facilities) to be provided under this Agreement. In such case, the CONTRACTOR shall present, within thirty (30) calendar days of the CITY's request, a written proposal to provide such modified or additional services. The CITY shall review the CONTRACTOR's proposal for the change in scope of services. The CITY and the CONTRACTOR may meet and confer to negotiate the CONTRACTOR's proposed revisions and costs and shall amend this Agreement, as appropriate, upon Board approval, to reflect the mutually agreed-upon changes in scope.

#### 5.6 SINGLE-FAMILY DWELLING COLLECTION SERVICES

These services shall be governed by the following terms and conditions:

- A. **Conditions of Service.** Subject to the limitations set forth in Article 4, the CONTRACTOR shall provide SFD Collection Service to all SFD Service Units in the Service Area whose Solid Waste, Recyclable Materials, and Green Waste is properly containerized in Carts, except as set forth in Articles 5.6.B-E where the Solid Waste, Recyclable Material and Green Waste Carts have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by the CONTRACTOR and Service Recipient that will provide safe and efficient accessibility to the CONTRACTOR's Collection crew and vehicle.
  1. **On-Premises Service.** Notwithstanding any term or definition set forth in this Agreement, the CONTRACTOR shall provide on-Premises Collection of Solid Waste, Recyclable Materials, and Green Waste to a SFD Service Unit if all adult Service Recipients residing therein have disabilities that prevent them from setting their Solid Waste, Recyclable Material or Green Waste Cart at the curb for Collection and if a request for on-Premises service has been made to and approved by the CONTRACTOR in the manner set forth in its written policy, which policy shall be agreed upon by the CONTRACTOR and the CITY and shall be provided to all residents requesting such on-Premises service. The

CONTRACTOR shall provide on-Premises Collection Service on the same Residential Service Work Day that curbside Collection would otherwise be provided to the SFD Service Unit. No additional monies shall be due to the CONTRACTOR for the provision of on-Premises service.

2. **Frequency and Scheduling of Service.** Except as set forth in Articles 5.6.D and 5.6.E, SFD Solid Waste Collection Services shall be provided one (1) time per week on a scheduled route basis, and SFD Recycling Service shall be provided bi-weekly. SFD Collection Services shall be scheduled so that an SFD Service Unit receives SFD Solid Waste Collection Service, SFD Recycling Service, and SFD Green Waste Collection Service on the same Residential Service Work Day.
  3. **Non-Collection.** Except as set forth in Articles 5.6.B-E, the CONTRACTOR shall not be required to Collect any Solid Waste, Recyclable Material, or Green Waste that is not placed in a Cart where such Cart is placed out for Collection in the manner required herein. In the event of non-collection, the CONTRACTOR shall affix to the Cart a Non-Collection Notice explaining why Collection was not made. The CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.
- B. Container Placement.** The CONTRACTOR shall respond to requests to notify Customers regarding appropriate placement of Containers (out of public view).
- C. SFD Recycling Service.** This service will be governed by the following additional terms and conditions:
1. **Overages.** The CONTRACTOR shall Collect corrugated cardboard that will not fit inside the Recycling Cart and has been reduced to a size not exceeding three feet by three feet (3' x 3') and placed beside the Cart for Collection.
- D. Curbside Holiday Tree Collection.** The CONTRACTOR shall Collect Holiday Trees, without stands, flocking or ornamentation and in sections no greater than six (6) feet in length, that are set at the curb beside from all SFD Service Units as part of the Collection Service. The CONTRACTOR shall provide this service beginning on the first Residential Service Work Day after December 25<sup>th</sup> until January 15<sup>th</sup>.
1. **Contaminated Holiday Trees.** Holiday trees that are flocked or contain tinsel or other decorations may be delivered to the Disposal Facility at the discretion of the CONTRACTOR.
- E. Bulky Item Collection Service.** This service will be governed by the following terms and conditions:
1. **Conditions of Service.** The CONTRACTOR shall provide Bulky Item Collection Service to all SFD Service Units in the Service Area whose Bulky Items have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by the

CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to the CONTRACTOR's Collection crew and vehicle. Bulky Items must be generated by the Customer and at the service address wherein the Bulky Items are Collected. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Items, the CITY shall be responsible to determine whether said definition shall apply. Bulky Items do not include items herein defined as Exempt Waste or Construction and Demolition Debris. Bulky Item Collection for SFD Service Units includes Electronic Waste. Except as set forth below in Article 5.6.E.2, the CONTRACTOR shall be entitled to charge for Collecting Bulky Items at a rate not exceeding the "Bulky Item Collection" Maximum Service Rate set forth in Exhibit 1, as adjusted under the terms of this Agreement.

2. **Free Bulky Item Collection Service.** Beginning July 1, 2019 and annually thereafter during the Term of this Agreement, the CONTRACTOR shall offer each SFD Customer the Collection of up to four (4) Bulky Items per year at no additional charge.
3. **Frequency of Service.** Bulky Item Collection Service shall be provided on the Customer's first SFD Collection Service date following the receipt of the request, with a minimum of 48-hours-notice, or as agreed upon between Customer and the CONTRACTOR.

## 5.7 MULTI-FAMILY DWELLING COLLECTION SERVICES

These services shall be governed by the following terms and conditions:

- A. **Conditions of Service.** The CONTRACTOR shall provide MFD Solid Waste Collection Service to all MFD Service Units in the Service Area whose Solid Waste is properly containerized in Bins or Carts where the Bins or Carts are accessible as set forth herein. The CONTRACTOR shall provide MFD Recycling Collection Service and MFD Green Waste Collection Service to all MFD Service Units, unless MFD Service Unit uses a service listed under Article 4.2, Limitations to the Scope of Exclusive Agreement.
  1. **Size and Frequency of Service.** This service shall be provided as deemed necessary and as determined between the CONTRACTOR and the Customer, but such service shall be received no less than one (1) time per week. Service may be provided by Bin or Cart at the option of the Customer. The size of the Container and the frequency (above the minimum) of Collection shall be determined between the Customer and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no MFD Solid Waste need be placed outside the Bin or Cart. The CONTRACTOR shall provide Containers at no additional charge as part of the MFD Collection Service however, Customers may provide their own Compactor provided that the Customer is completely responsible for its proper maintenance and that such Compactor shall be of a type that can be serviced by the CONTRACTOR's equipment. The CONTRACTOR

shall not be required to Collect any MFD Solid Waste that is not placed in a Solid Waste Bin or Cart. In the event of non-collection, the CONTRACTOR shall contact the Customer to discuss the reason for the non-collection and shall affix to the Solid Waste Bin or Cart a Non-Collection Notice explaining why Collection was not made.

**B. MFD Solid Waste Collection Service.** This service will be governed by the following additional terms and conditions:

- 1. MFD Solid Waste Overflow.** In the case of overflows of MFD Solid Waste, the CONTRACTOR may, at its option, Collect the overflow material. In the event the CONTRACTOR elects not to Collect the overflow material, the CONTRACTOR shall contact the MFD Service Unit management to inform them of the situation and request that arrangements be made for the Customer's personnel to put the material in the Container. In the event of multiple occurrences of overflow, in which such overflow is creating an undue health and safety concern, the CONTRACTOR shall meet with the Customer to arrange for an appropriate change in Solid Waste Bin or Cart size, Collection frequency or both. In the event the CONTRACTOR cannot reach an agreement with the Customer regarding the change in service, the CONTRACTOR shall provide the additional services the CONTRACTOR deems necessary to avoid future overflow or any undue health and safety concern and shall bill the Customer accordingly.

**C. MFD Recycling Offer of Service.** MFD Recycling Collection Service. During the Term of this Agreement the CONTRACTOR shall offer to provide MFD Recycling Collection Service. Subject to the limitations set forth in Article 4, the CONTRACTOR shall offer Recycling Collection Service to all MFD Service Units in the Service Area on a subscription basis at a rate set at 80% of the established solid waste rate for corresponding size and frequency of service and not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. The CONTRACTOR shall provide Recycling services to all MFD Service Units requesting such service where such recyclables are properly containerized, and uncontaminated by materials not included in the Recycling program, in Bins or Carts, where the Bins or Carts are accessible as set forth herein. Subject to the limitations set forth in Article 4, the CONTRACTOR shall provide and actively promote MFD Recycling Service to all MFD Service Units in the Service Area requesting such service.

- 1. Non-Collection.** The CONTRACTOR shall not be required to Collect any cardboard or Recyclable Materials that are not placed in a Bin or Cart Container where such Container is placed out for Collection in the manner required herein. In the event of non-collection, the CONTRACTOR shall affix to the Container a Non-Collection Notice explaining why Collection was not made. The CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.

- D. MFD Green Waste Offer of Service.** MFD Green Waste Collection Service. During the Term of this Agreement the CONTRACTOR shall offer to provide MFD Green Waste Collection Service. Subject to the limitations set forth in Article 4, the CONTRACTOR shall offer Green Waste Collection Services to all MFD Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. The CONTRACTOR shall provide Green Waste Collection Service to all MFD Service Units requesting such service where such Green Waste is properly containerized, and uncontaminated by materials not included in the Green Waste program, in Bins or Carts, where the Bins or Carts are accessible as set forth herein. Subject to the limitations set forth in Article 4, the CONTRACTOR shall provide and actively promote MFD Green Waste Service to all MFD Service Units in the Service Area requesting such service.
- 1. Non-Collection.** The CONTRACTOR shall not be required to Collect any MFD Green Waste that is not placed in a Bin or Cart. In the event of non-collection, the CONTRACTOR shall contact the Customer to discuss the reason for the non-collection and shall affix to the Bin or Cart a Non-Collection Notice explaining why Collection was not made.
- E. Bulky Item Service.** During the Term of this Agreement, the CONTRACTOR shall offer to provide Bulky Item Collection Service to MFD Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. The CONTRACTOR will be required to separate and Recycle all commodities that can be feasibly recovered. Bulky Item Collection for MFD Customers includes Electronic Waste. MFD Generators shall pay a separate fee in accordance with the rate established by the CITY.
- F. Annual Holiday Tree Collection.** Annually, commencing the first collection day after December 25 and ending January 15, the CONTRACTOR shall Collect Holiday Trees, without stands, flocking or ornamentation and in sections no greater than six (6) feet in length, from MFDs at no additional charge. The CONTRACTOR shall perform Collection of holiday trees on Customers' normal Collection Days at Customers' Collection location for Solid Waste. Trees must be placed within the service enclosure.
- G. Accessibility.** The CONTRACTOR shall Collect all Bins or Carts that are readily and safely accessible to the CONTRACTOR's crew and vehicles and not blocked. However, the CONTRACTOR shall provide "push services" as necessary during the provision of MFD Collection Services. Push services shall include, but not be limited to dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location. The CONTRACTOR shall be entitled to charge for "push services" at a rate not exceeding the Maximum Service Rates for such services set forth in Exhibit 1.

## 5.8 COMMERCIAL COLLECTION SERVICES

These services will be governed by the following terms and conditions: Commercial Waste must be generated by and at the Commercial Service Unit wherein the Commercial Waste is Collected and does not include items defined herein as Exempt Waste.

- A. Conditions of Service.** The CONTRACTOR shall provide Commercial Solid Waste Collection Service to all Commercial Service Units in the Service Area whose Solid Waste is properly containerized in Bins, Carts or Compactors, where the Bins, Carts, or Compactors are accessible as set forth herein.
- 1. Size and Frequency of Service.** This service shall be provided as deemed necessary and as determined between the CONTRACTOR and the Customer, but such service shall be received no less than one (1) time per week. The size of the Container and the frequency (above the minimum) of Collection shall be determined between the Customer and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no Commercial Solid Waste need be placed outside the Containers. The CONTRACTOR shall provide Containers at no additional charge as part of the Commercial Collection Service however, Customers may provide their own Compactor provided that the Customer is completely responsible for its proper maintenance and that such Compactor shall be of a type that can be serviced by the CONTRACTOR's equipment.
  - 2. Non-Collection.** The CONTRACTOR shall not be required to Collect any Commercial Solid Waste that is not placed in a Solid Waste Container. In the event of non-collection, the CONTRACTOR shall contact the Customer to discuss the reason for the non-collection and shall affix to the Container a Non-Collection Notice explaining why Collection was not made.
  - 3. Commercial Solid Waste Overflow.** In the case of overflows of Commercial Solid Waste, the CONTRACTOR may, at its option, Collect the overflow material. In the event the CONTRACTOR elects not to Collect the overflow material, the CONTRACTOR shall contact the Customer to inform them of the situation and request that arrangements be made for the Customer's personnel to put the material in the Container. In the event of multiple occurrences of overflow, in which such overflow is creating an undue health and safety concern, the CONTRACTOR shall meet with the Customer to arrange for an appropriate change in Solid Waste Container size, Collection frequency or both. In the event the CONTRACTOR cannot reach an agreement with the Customer regarding the change in service, the CONTRACTOR shall provide the additional services the CONTRACTOR deems necessary to avoid future overflow or any undue health and safety concern and shall bill the Customer accordingly.
- B. Commercial Recycling Offer of Service.** Subject to the limitations set forth in Article 4, the CONTRACTOR shall offer Recycling services to all Commercial Service Units in the Service Area on a subscription basis at a rate set at 80% of the established solid waste



rate for corresponding size and frequency of service and not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. The CONTRACTOR shall provide Recycling services to all Commercial Service Units requesting such service where such recyclables are properly containerized, and uncontaminated by materials not included in the Recycling program, in Containers, where the Containers are accessible as set forth herein. Subject to the limitations set forth in Article 4, the CONTRACTOR shall provide and actively promote Commercial Recycling Service to all Commercial Service Units in the Service Area requesting such service.

- 1. Non-Collection.** The CONTRACTOR shall not be required to Collect any cardboard or Recyclable Materials that are not placed in a Container where such Container is placed out for Collection in the manner required herein. In the event of non-collection, the CONTRACTOR shall affix to the Container a Non-Collection Notice explaining why Collection was not made. The CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.
- C. Green Waste Offer of Service.** During the Term of this Agreement the CONTRACTOR shall offer to Collect Green Waste from Commercial Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. The CONTRACTOR shall, subject to the limitations set forth in Article 4, provide this service to all Commercial Service Units in the Service Area requesting such service where such Green Waste is properly containerized in Containers, where the Containers are accessible as set forth herein.

  - 1. Non-Collection.** The CONTRACTOR shall not be required to Collect any Green Waste that is not placed in a Container where such Container is placed out for Collection in the manner required herein. In the event of non-collection, the CONTRACTOR shall affix to the Container a Non-Collection Notice explaining why Collection was not made. The CONTRACTOR shall maintain a copy of such notices for a period of three (3) years.
- D. Bulky Item Service.** During the Term of this Agreement, the CONTRACTOR shall offer to provide Bulky Item Collection Service to Commercial Service Units in the Service Area on a subscription basis at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. The CONTRACTOR will be required to separate and Recycle all commodities that can be feasibly recovered. Commercial Generators shall pay a separate fee in accordance with the rate established by the CITY.
- E. On-Call Electronic Waste Collection.** The CONTRACTOR shall provide on-call electronic waste collection service.
- F. On-Call Universal Waste Collection.** The CONTRACTOR shall provide on-call Universal Waste collection service.
- G. Accessibility.** The CONTRACTOR shall Collect all Containers that are readily and safely accessible to the CONTRACTOR's crew and vehicles and not blocked. However, the

CONTRACTOR shall provide “push services” as necessary during the provision of Commercial Collection Services. Push services shall include, but not be limited to dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location. The CONTRACTOR shall be entitled to charge the Customer for “push services” at a rate not exceeding the Maximum Service Rate for such service set forth in Exhibit 1.

## 5.9 CITY COLLECTION SERVICES

These services shall be provided to the CITY at no charge to the CITY and will be governed by the following terms and conditions:

- A. Conditions of Service.** The CONTRACTOR shall provide CITY Solid Waste Collection Service, CITY Recycling Service, CITY Green Waste Service, and the CITY Container Service to all CITY Service Units where the Containers are accessible as set forth in Article 5.9.C. This does not include special or additional waste generated by special events, except as described in Article 5.9.D-I or natural disaster or major construction projects and does not include sludge or construction and demolition waste.
- B. Frequency of Service.** Each service shall be provided at least once every week on a scheduled route basis.
- C. Accessibility.** The CONTRACTOR shall Collect all Containers, that are readily and safely accessible to the CONTRACTOR’s crew and vehicles and not blocked. However, the CONTRACTOR shall provide “push services” as necessary during the provision of CITY Collection Services. Push services shall include, but not be limited to, dismounting from the Collection vehicle, moving the Bins or Carts from their storage location for Collection and returning the Bins or Carts to their storage location.
- D. Bulky Item Service.** During the Term of this Agreement the CONTRACTOR shall provide Bulky Item Collection Service to the CITY Service Units in the CITY. Bulky Item Collection for the CITY includes Electronic Waste. The CITY shall contact CONTRACTOR to arrange Collection pursuant to this paragraph.
- E. CITY Clean-Up Service.** The CONTRACTOR, in response to a request from the Contract Administrator at least thirty (30) days in advance, shall provide collection vehicles, Containers and staff necessary for temporary clean-up programs at centralized collection sites. The City may select up to four (4) events each Contract Year, and the events may include but shall not be limited to Carson River and Pinenut Mountain area clean-ups. Events may include up to three (3) locations per event for eight (8) hours per location per event. A minimum of two (2) 30-CY boxes for solid waste and (1) 30 CY box for recyclables will be provided at each location at the start of each event and will be serviced throughout the day. The CONTRACTOR shall transport and deliver the collected materials to the disposal facility, the materials recovery facility, or such other facility as is appropriate for the disposition of the materials and approved by the Contract Administrator.

- F. Special Event Collection Service.** The CONTRACTOR, in response to a request from the event organizer at least thirty (30) days in advance, shall provide event boxes with lids featuring designated opening(s) for bottles and cans, wheeled carts, bins, and/or roll-off boxes to collect solid waste and recyclable materials at “no charge” for CITY-sponsored events that are open to the public and that do not require paid admission or the purchase of a ticket. Signage indicating “Recycling” will be clearly visible on the designated Container. The CONTRACTOR will assist the venue and event organizers with developing recycling plans and reporting data. When requested by event organizers, solid waste and recycling collection service will be provided for each venue or event. Additionally, event organizers may request numerous carts to distribute throughout the event for use by patrons. Carts to be made available include standard cardboard event boxes with lids (18x18x34 or comparable), 64 and 96-gallon carts. Bins will be made available in sizes including 2, 3, 4, and 6 cubic yards. Roll-Off Box service will be made available in Container sizes including 10, 20, 30 and 40 cubic yards. Collection frequency will be provided as required by the event organizer.
- G. Neighborhood Clean-Up Program.** Beginning July 1, 2019 and annually thereafter during the term of this Agreement, the CONTRACTOR shall conduct an annual Neighborhood Clean-Up Program, where residents are permitted to place bulky items curbside on a designated day according to designated parameters. The number of tires collected as part of each Neighborhood Clean-Up shall be limited to four (4) passenger car and light truck tires per household.
- H. On-Call Bulky Item Service.** Beginning July 1, 2019 and thereafter during the term of this Agreement, the CONTRACTOR shall provide on-call collection of illegally dumped Bulky Items as requested by the CITY. Such items must be accessible by truck, and the timing of collection will occur after consultation with the Contractor. Within 48 hours of notification by the CITY, the CONTRACTOR shall Collect the item(s). The CONTRACTOR shall provide a designated contact to the CITY for notification of illegally dumped items through the CITY’s Connect application.
- I. Recycling Drop-Off Site Services.** Beginning July 1, 2019 and thereafter during the term of this Agreement, the CONTRACTOR shall operate the Recycling Drop-Off Site at the Carson City Sanitary Landfill, Carson City, Nevada, and any future site within the CITY upon receipt of sixty (60) days written notice of the change. The Recycling Drop-Off Sites shall accept materials listed Exhibit 5.
- The CONTRACTOR is responsible to maintain Recycling Drop-Off site, provide adequate collection of materials, and clean up any spilled materials or overages. The CONTRACTOR will respond to CITY staff requests for the service of this area within 24 hours of notification.

#### **5.10 TEMPORARY BIN COLLECTION SERVICES**

The Temporary Bin Collection Services to be performed by the CONTRACTOR shall include the following:

- A. Temporary Bin Service for Units within the Service Area.** The CONTRACTOR shall respond no later than the second Commercial Work Day after receipt of the request for service, and shall provide the appropriate Container for such Collection according to the circumstances; however, no service shall be provided on Sunday. The CONTRACTOR shall perform the following services:

  - 1. Provision, maintenance, and replacement of all Containers required for the provision of all Temporary Bin Services; and
  - 2. Transport of Containers to the Approved Facility as appropriate under this Agreement.
- B. Rates.** The Maximum Service Rates for Temporary Bin Service shall be as specified in Exhibit 1.
- C. Records.** The CONTRACTOR will conduct proper record keeping to be sure that the Temporary Bin materials are Recycled to the extent possible and the amounts disposed and diverted are properly recorded and reported.

#### **5.11 PUBLIC EDUCATION AND OUTREACH**

All public education activities will be conducted by the CONTRACTOR. The CONTRACTOR shall be responsible for ensuring that its customers consistently receive a high level of customer service and responsiveness. The CONTRACTOR shall prepare an annual public education plan and meet with the CITY or the CITY's representative to review the plan. The CITY shall have the right to review all promotion materials and implementation of the promotion strategy. A detailed listing of Public Education and Outreach requirements can be found in Article 5.11 of this Agreement.

- A. Contractor Responsibilities.** The CONTRACTOR will be required to provide the following services:

  - 1. Distribute public education and outreach materials during roll-out of the new collection services program. This will entail distributing program literature with delivery of new carts and bins to all customers at inception of the new program.
  - 2. Public education strategy and development of materials to support roll-out of new collection services.
  - 3. Develop, produce and distribute an information packet to each new customer throughout the Contract term. The CONTRACTOR may attach these packets to the carts and bins upon initial cart and bin distribution at the commencement of the new Agreement and at the point of new customer set-up throughout the term of this Agreement. This packet shall: describe available services, including available recycling and diversion programs; provide instructions for proper use of the carts and bins provided (such as how to place carts or other permitted items for Collection, the types of materials to be placed in each cart); detailed holiday Collection schedules; and, provide billing and customer service telephone numbers. This packet shall contain updated information on how to

use Containers, when, where and how to place solid waste for Collection, and who to contact with service or billing questions, and for bulky item Collection. The packet must also clearly indicate what materials, such as syringes and other Household Hazardous Wastes (HHW), should not be disposed of in these Containers. This brochure must include instructions on CITY-managed solid waste programs and services such as information on the CITY's free dump program and HHW program. The informational packet will be updated and re-distributed during years five (5) and ten (10) of this Agreement term, and at year fifteen (15) of the Agreement if the initial term is extended as provided in Article 3.2.

4. Develop, produce and distribute public education and promotional materials to MFD and Commercial accounts at inception of the new program and during the term of this Agreement, including all outreach and education materials necessary to implement any recycling and green waste collection programs.
  5. Deliver set-out correction notices during the term of this Agreement.
  6. Staff a booth at local public events as agreed upon with the CITY and distribute promotional and educational materials.
  7. Include within its bills any inserts produced and provided by the CITY. Inserts must fit within the CONTRACTOR envelopes. CITY will be responsible for any additional postage resulting from the inserts.
- B. Spanish Language.** The CONTRACTOR shall provide, as requested by the CITY, Spanish translations of written communication (packets, billing inserts, website content, etc.) to meet the needs of CITY SFD, MFD and Commercial Customers.
- C. Coordination with Contract Administrator.** The CONTRACTOR shall cooperate and coordinate with the Contract Administrator to minimize duplicative, inconsistent, or inappropriately timed education campaigns. The CONTRACTOR shall allow the Contract Administrator a reasonable opportunity to review, request modifications to, and approve all public education materials including, but not limited to: print, radio, television, or internet media before publication, distribution, and/or release. The CITY shall have the right to request that the CONTRACTOR include CITY identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld.
- D. Graffiti Abatement.** The CONTRACTOR shall be responsible for graffiti removal from Containers within 48-hours of notification at no additional charge to the Customer or to the CITY.
- E. Other Services.** The CONTRACTOR shall provide additional services and programs, such as pilot programs, special studies, etc., as requested by the CITY at a price to be mutually agreed upon between the CONTRACTOR and the Contract Administrator. In the event the CONTRACTOR and the Contract Administrator cannot reach a mutually

agreed upon price for the requested service or program, the CITY shall have the right to procure the service of other vendors or contractors to provide the requested service, provided such service would not have a negative financial impact on CONTRACTOR (e.g., reduce revenue or increase costs).

**F. Emergency Situations.** In the event of a flood, tornado, major storm, earthquake, fire, natural disaster, or other such event, the Contract Administrator shall grant the CONTRACTOR a variance from regular routes and schedules. As soon as practicable after such event, the CONTRACTOR shall advise the Contract Administrator when it is anticipated that normal routes and schedules can be resumed. The Contract Administrator shall make an effort through the local news media to inform the public when regular services may be resumed.

**1. Emergency Service Compensation.** The CONTRACTOR shall provide emergency services (i.e., special collections, transport, processing and disposal) at the CITY's request in the event of major accidents, disruptions, or natural calamities. The CONTRACTOR shall be capable of providing emergency services within twenty-four (24) hours of notification by the CITY or as soon thereafter as is reasonably practical in light of the circumstances. Emergency services which exceed the scope of work under this Agreement, and which are not compensated by charges to Customers (in accordance with the Maximum Service Rates provided in Exhibit 1), will be billed by the CONTRACTOR to the CITY in accordance with the Maximum Service Rates on Exhibit 1, and may either be paid by the CITY or treated as a CITY-Directed Change as set forth in Article 5.5 of this Agreement.

## **ARTICLE 6: PROCESSING AND DISPOSAL REQUIREMENTS**

### **6.1 OWNERSHIP OF SOLID WASTE, RECYCLABLE MATERIALS, AND ORGANIC MATERIALS**

The CITY and the CONTRACTOR understand and agree that it is the CONTRACTOR, and not the CITY, who will arrange to Collect Solid Waste, Recyclable Materials and Organic Materials, that the CITY has not, and, by this Agreement does not, instruct CONTRACTOR on its Collection methods, nor supervise the Collection process; nor do the Parties intend to place title to Solid Waste, Recyclable Materials and Organic Materials Collected by the CONTRACTOR in the CITY. Rather, the Parties intend that whatever, if any, title in and to the Solid Waste, Recyclable Materials and Organic Materials that is Collected by the CONTRACTOR which otherwise might exist in or with the CITY in the absence of this Agreement is hereby transferred to the CONTRACTOR; and further that if the CONTRACTOR gains title to such Solid Waste, Recyclable Materials and Organic Materials it is by operation of law and agreement with its Service Recipients and is not the result of this Agreement. At no time does the CITY obtain any right of ownership or possession of Solid Waste, Recyclable Materials and Organic Materials placed for

Collection, and nothing in this Agreement shall be construed as giving rise to any inference that the CITY has any such rights. The CITY and the CONTRACTOR agree that, for the purposes of all laws imposing liability for defective products, it is the CONTRACTOR, and not the CITY which is to be considered the merchant of goods Recycled pursuant to this Agreement. Subject to the provisions of this Agreement, and unless the CITY exercises its rights to direct the location for Disposal and Processing of Solid Waste, Recyclable Materials and Organic Materials the CONTRACTOR shall have the right to retain, Recycle, Process, Dispose of, and otherwise use Solid Waste, Recyclable Materials and Organic Materials Collected pursuant to the terms hereof in any lawful fashion or for any lawful purpose; and, further, shall have the right to retain any benefit resulting from its right to retain, Recycle, Process, Dispose of, or reuse the Solid Waste, Recyclable Materials and Organic Materials which it collects.

## **6.2 TRANSPORTATION OF DISCARDED MATERIALS**

The CONTRACTOR shall transport all Discarded Materials Collected to the designated Transfer Station, MRF Materials Recovery Facility, Organic Materials Processing Facility or Disposal Facility. The CONTRACTOR agrees to make all reasonable efforts to not commingle source separated Recyclable Materials with Solid Waste intended for landfill disposal. The CONTRACTOR shall maintain accurate records of the quantities of Solid Waste, Recyclable Materials and Organic Materials transported to the Transfer Station, MRF Materials Recovery Facility, Organic Materials Processing Facility or Disposal Facility and will cooperate with the CITY in any audits or investigations of such quantities. The CONTRACTOR shall cooperate with the operator of any Transfer Station, MRF, Organic Materials Processing Facility or Disposal Facility with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, cooperating with its Hazardous Waste exclusion program, and so forth.

## **6.3 TRANSFER OF DISCARDED MATERIALS**

The CONTRACTOR may transfer Solid Waste Collected but not sent to a designated Disposal Facility; Recyclable Materials Collected, but not sent to a designated MRF; and, Organic Materials including Green Waste and Food Waste Collected but not sent to a designated Organic Materials Processing Facility, at the designated Transfer Station. All expenses related to the transfer of Solid Waste will be the sole responsibility of the CONTRACTOR. If the CONTRACTOR or Affiliate owns and/or operates the Transfer Station, all expenses associated with permitting, regulatory compliance, etc. and all other costs associated with the operation and ownership of the Transfer Station is the sole responsibility of the CONTRACTOR.

- A. Status of Transfer Station.** The Approved Transfer Station utilized by the CONTRACTOR shall be designed and constructed in accordance with Applicable Laws. Any such Transfer Station shall have been issued all permits from federal, State, regional, county and city agencies necessary for it to operate as a large volume transfer/processing facility and be in full regulatory compliance with all such permits.

#### 6.4 DISPOSAL

The CONTRACTOR shall dispose of Solid Waste Collected, but not sent to a designated Transfer Station, MRF or Organic Material Processing Facility, and Residue at the designated Disposal Facility. All expenses related to the disposal of Solid Waste will be the sole responsibility of the CONTRACTOR. If the CONTRACTOR or Affiliate owns and/or operates the Disposal Facility, all expenses associated with permitting, regulatory compliance, closure and post-closure, etc. and all other costs associated with the operation and ownership of the Disposal Facility is the sole responsibility of the CONTRACTOR.

- A. Status of Disposal Facility.** The Approved Disposal Facility utilized by the CONTRACTOR shall have been issued all permits from federal, state, regional, county and city agencies necessary for it to operate and be in full regulatory compliance with all such permits.

#### 6.5 RECYCLABLE MATERIALS PROCESSING SERVICES

The CONTRACTOR shall deliver all Collected Recyclable Material to a fully permitted Recyclable Material Processing Facility or a fully permitted Transfer Station. All expenses related to Recyclable Material Processing and marketing will be the sole responsibility of the CONTRACTOR. The CONTRACTOR shall ensure that all Recyclable Material Collected pursuant to this Agreement is diverted from the landfill. The CONTRACTOR shall ensure that the Recyclable Material Collected pursuant to this Agreement is not disposed of in a landfill, except as a Residue resulting from Processing.

- A. Status of Recyclable Material Processing Facility.** The Approved Recyclable Material Processing Facility utilized by the CONTRACTOR shall have been issued all permits from federal, state, regional, county and city agencies necessary for it to accept the CITY's Recyclable Materials, and be in full regulatory compliance with all such permits
- B. Temporary Market Impact Exemption.** The CONTRACTOR shall notify the CITY if the CONTRACTOR must temporarily dispose of a Recyclable Material as Residue if a market for the identified Recyclable Material is unavailable due to market conditions outside of the CONTRACTOR's control. The notification shall be in writing, identify which Recyclable Material is impacted, provide verifiable documentation, and provide a timeframe for the temporary exemption. The temporary exemption shall not impact Customer Collection services Market or rates.

#### 6.6 ORGANIC MATERIALS PROCESSING SERVICES

The CONTRACTOR shall deliver all Collected Organic Material to a fully permitted Organic Material Processing Facility or a fully permitted Organic Material Transfer Station. All expenses related to Organic Material Processing and marketing will be the sole responsibility of the CONTRACTOR. The CONTRACTOR shall ensure that all Organic Material Collected pursuant to this Agreement is diverted from the landfill. The CONTRACTOR shall ensure that the Organic Material Collected pursuant to this Agreement is not disposed of in a landfill, except as a Residue resulting from Processing. Failure to do so places the CONTRACTOR in default. The CITY has the option, but not obligation, to direct the CONTRACTOR where to deliver the material.

- A. Status of Organic Material Processing Facility.** The Approved Organic Material Processing Facility utilized by the CONTRACTOR shall be designed and constructed in



accordance with Applicable Laws. Any such Organic Material Processing Facility shall have been issued all permits from federal, State, regional, county and city agencies necessary for it to accept the CITY's Organic Materials, and be in full regulatory compliance with all such permits.

- B. Temporary Market Impact Exemption.** The CONTRACTOR shall notify the CITY if the CONTRACTOR must temporarily dispose of Green Waste in the event the Approved Organic Materials Processing Facility closes temporarily without notice. The notification shall be in writing and provide verifiable documentation and a timeframe for the temporary exemption. The temporary exemption shall not impact Customer Collection services or rates. Should the Approved Organic Materials Processing Facility close permanently, the provisions of Article 5.5 shall apply.

## **ARTICLE 7: REQUIREMENTS FOR OPERATIONS, EQUIPMENT AND PERSONNEL**

### **7.1 GENERAL**

The CONTRACTOR shall at all times comply with Applicable Laws and provide services in a manner that is safe to the public and the CONTRACTOR's employees. Except to the extent that a higher performance standard is specified in this Agreement, the CONTRACTOR shall perform services in accordance with Solid Waste, Recyclable Materials and Organic Materials management practices common to Nevada.

### **7.2 CONTRACTOR'S OFFICE**

The CONTRACTOR shall maintain a publicly accessible office located within the CITY Service Area that provides telephone access to residents and businesses of the CITY and shall be open during normal business hours, which are currently 8:00 a.m. to 5:00 p.m., Monday through Friday, except for Holidays. Office hours may be adjusted at the discretion of the CONTRACTOR only after appropriate notification is provided to all Customers and provided that offices are open for business at least eight (8) hours per day Monday through Friday, except for Holidays.

### **7.3 SERVICE STANDARDS**

The CONTRACTOR shall perform all Collection Services under this Agreement in a thorough and professional manner. Except for incidents of Excuse from Performance set forth in Article 12.7 herein, Collection Services described in this Agreement shall be performed regardless of difficulty of Collection.

### **7.4 COLLECTION ROUTES, OPERATING HOURS AND SCHEDULES**

- A. Collection Routes.** Beginning not less than ninety (90) days prior to commencement of Collection Services, and continuing during the Term of this Agreement, the CONTRACTOR shall prepare and maintain maps precisely defining Collection routes, together with the days and the times at which Collection shall regularly commence.

Such maps shall be made available to the CITY for review upon request by the Contract Administrator.

**B. Subsequent Collection Route Changes.** In the event of a route change which will change the Collection day for an SFD Service Unit, the CONTRACTOR shall notify those Service Recipients in writing of the route change not less than thirty (30) days before the proposed date of implementation. The CONTRACTOR shall also provide the Contract Administrator with a copy of the service change notification.

**C. Hours of Collection.**

Unless otherwise authorized by the Contract Administrator, the CONTRACTOR's days and hours for the Collection operations shall be as follows:

1. **SFD Collection.** SFD Collection Services shall only occur between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, with no regularly scheduled service on Saturday or Sunday. The hours, days, or both of Collection may be temporarily extended due to extraordinary circumstances or conditions.
2. **MFD, Commercial and CITY Collection.** MFD, Commercial and the CITY Collection shall only occur between the hours of 5:00 a.m. and 5:00 p.m., Monday through Saturday. Collection Services performed in or near areas zoned for residential use and which disturbs the residents, may be limited upon request of CITY to the hours of 7:00 a.m. to 6:00 p.m. The hours of Collection may be temporarily extended due to extraordinary circumstances or conditions.

**7.5 COLLECTION STANDARDS**

**A. Manner of Collection.** The CONTRACTOR shall provide Collection Service with as little disturbance as possible and shall leave any Cart or Bin in an upright position at the same point it was Collected without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

The CONTRACTOR, at the request of Customers, may provide special services including: (i) unlocking Containers; (ii) accessing Container enclosures with a key; or, (iii) pulling or pushing Containers to the Collection vehicle. The CONTRACTOR may charge Customers for extra services at the Maximum Approved Rates for such services.

**B. Litter Abatement and Spill Prevention.** The CONTRACTOR shall not litter Premises in the process of providing Collection Services or while its vehicles are on the road. The CONTRACTOR shall transport all materials Collected under the terms of this Agreement in such a manner as to prevent the spilling or blowing of such materials from the CONTRACTOR's vehicle. The CONTRACTOR shall exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of any material and shall immediately, at the time of occurrence, clean up such spilled or dropped materials.

1. The CONTRACTOR shall not be responsible for cleaning up unsanitary conditions caused by the carelessness of the Service Recipient; however, the CONTRACTOR shall clean up any materials that are spilled or scattered by the CONTRACTOR or its employees.

2. Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the CONTRACTOR's operations or equipment repair shall be covered immediately with an absorptive material and removed from the street surface. When necessary, the CONTRACTOR shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. To facilitate such clean-up, the CONTRACTOR's vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel. The CONTRACTOR shall not be responsible for removing any stain that may remain after application of such absorbents and cleaning agents.
3. The CONTRACTOR shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, hot load (combustion of material in the truck), or accidental damage to a vehicle.
4. The above paragraphs notwithstanding, the CONTRACTOR shall clean up any spillage or litter caused by the CONTRACTOR within one (1) hour upon notice from the CITY.
5. In the event where damage to the CITY Streets (other than stains) is the result of a hydraulic oil spill caused by the CONTRACTOR, the CONTRACTOR shall be responsible for all repairs to return the street to the same condition prior to the spill. The CONTRACTOR shall also be responsible for all clean-up activities related to the spill. Repairs and clean-up shall be performed in a manner satisfactory to the Contract Administrator and at no cost to the CITY.
6. The CONTRACTOR shall be responsible for reporting incidents as required by the Nevada Division of Environmental Protection.

## **7.6 OWNERSHIP OF MATERIALS**

- A. Title to Solid Waste, Recyclable Materials, Organic Materials, Bulky Items, and Construction and Demolition Debris shall pass to the CONTRACTOR at such time as said materials are properly containerized, bagged, or bundled and placed at the curb or other point of Collection in the manner as set forth herein or as agreed to by the CONTRACTOR and the Customer. If materials are placed out for Collection without being properly containerized, bagged, or bundled, title shall pass to the CONTRACTOR at the time the material is placed in the CONTRACTOR's Collection vehicle. If Collected materials are delivered to a Transfer Station, Materials Recovery Facility, or Organic Material Processing Facility other than one operated by the CONTRACTOR, then title will again transfer from the CONTRACTOR to the operator of the non-CONTRACTOR Transfer Station, Materials Recovery Facility, or Organic Material Processing Facility upon such delivery.
- B. Title to any material self-hauled to the Transfer Station, Materials Recovery Facility, Organic Material Processing Facility or Disposal Facility shall pass to the CONTRACTOR at the time the material is accepted at these facilities provided CONTRACTOR owns such facilities.
- C. Title to material Collected as part of a CITY Clean-up Service or Special Event Collection Service shall pass to the CONTRACTOR at the time the material is placed in the

Collection Container provided by the CONTRACTOR or the CONTRACTOR's Collection vehicle if no Containers are provided by the CONTRACTOR.

## 7.7 EXEMPT WASTE

- A. Under no circumstances shall the CONTRACTOR's employees knowingly Collect Exempt Waste or remove unsafe or poorly containerized Exempt Waste from a Collection Container. If the CONTRACTOR determines that material placed in any Container for Collection is Exempt Waste, or other material that may not legally be accepted at the Materials Recovery Facility, Transfer Station, Organic Material Processing Facility or Disposal Facility, or presents a hazard to the CONTRACTOR's employees, the CONTRACTOR shall have the right to refuse to accept such material. The Generator shall be contacted by the CONTRACTOR and requested to arrange for proper disposal service. If the Generator cannot be reached immediately, the CONTRACTOR shall, before leaving the premises, leave a Non-Collection Notice which indicates the reason for refusing to Collect the material and how the Exempt Waste can be properly disposed or recycled.
- B. If Exempt Waste is found in a Collection Container that poses an imminent danger to people or property, the CONTRACTOR shall immediately notify the appropriate Fire Department and/or other emergency services departments as appropriate, as well as the CITY.
- C. If Exempt Waste is identified at the time of delivery to the Transfer Station, Materials Recovery Facility, Organic Material Processing Facility or Disposal Facility and the generator cannot be identified, the CONTRACTOR shall be solely responsible for handling and arranging transport and disposition of the Exempt Waste.

## 7.8 REGULATIONS AND RECORD KEEPING

The CONTRACTOR shall comply with emergency notification procedures required by Applicable Laws and regulatory requirements. All records required by laws and regulations shall be maintained at the CONTRACTOR's facility.

## 7.9 VEHICLE REQUIREMENTS

- A. **General Provisions.** The CONTRACTOR shall provide a fleet of new Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms, except that CONTRACTOR may continue to use four 2018 trucks that had been utilized under a previous contract with the CITY. All such vehicles shall have watertight bodies designed to prevent leakage, spillage, or overflow. Hoppers shall be enclosed on top and on all sides to prevent material from leaking, blowing or falling from the vehicles. Each Collection vehicle shall be equipped with a shovel and broom for clean-up of spillage. Collection vehicles shall never be loaded to exceed the manufacturer's recommended weight limit or otherwise operated unsafely or in violation of any Applicable Law. CONTRACTOR shall replace Collection vehicles according to the CONTRACTOR'S industry-standard replacement schedule at ten-to-twelve years of vehicle age depending upon vehicle type.
- B. **Safety Markings.** All Collection equipment used by the CONTRACTOR shall have

appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and warning flags. All such safety markings shall be in accordance with the requirements of the CITY, as may be amended from time to time.

- C. Vehicle Signage and Painting.** Collection vehicles shall be painted and numbered uniquely without repetition and shall have the CONTRACTOR's name, the CONTRACTOR's customer service telephone number, and the number of the vehicle painted in letters of contrasting color, at least six (6) inches high, on each side and the rear of each vehicle. No advertising shall be permitted other than the name of the CONTRACTOR except promotional advertisement of the Recyclable Materials and Organic Materials programs or such other signage as may be approved by the Contract Administrator in writing. The CONTRACTOR shall repaint all vehicles (including vehicle striping if appropriate) during the Term of this Agreement as necessary to maintain a positive public image.
- D. Vehicle Maintenance.** The CONTRACTOR shall maintain Collection equipment in a clean condition and in good repair at all times. All parts and systems of the Collection equipment shall operate properly and be properly maintained. The CONTRACTOR shall wash all Collection vehicles at least once a week. The CONTRACTOR shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operate properly. The CONTRACTOR shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. The Contract Administrator may inspect vehicles at any reasonable time, and within three (3) calendar days of such a request, to determine compliance with this Agreement and sanitation requirements.
- E. Vehicle Noise Level.** All Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County, and the CITY noise level regulations. The CITY may request the CONTRACTOR to check any piece of equipment for conformance with the noise limits when reasonable to do so.
- F. Vehicle and Equipment Inventory.** On or before the Effective Date of this Agreement, the CONTRACTOR shall provide to the Contract Administrator an inventory of Collection vehicles and major equipment used by the CONTRACTOR for Collection or transportation in performance of services under this Agreement. The inventory shall indicate each Collection vehicle by identification number, DMV license number, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles, the date of acquisition, the decibel rating, and the maintenance and rebuilt status. The CONTRACTOR shall submit to the Contract Administrator an updated inventory annually, or more often at the request of the CITY. Each vehicle inventory shall be accompanied by a certification signed by the CONTRACTOR that all Collection vehicles meet the requirements of this Article.
- G. Vehicle Registration, Licensing and Inspection.** The CONTRACTOR shall maintain documentation to verify that each of the CONTRACTOR's Collection vehicles are in compliance with all registration, licensing and inspection requirements of the Nevada Department of Public Safety, the Nevada Department of Motor Vehicles, and any other Applicable Laws or regulations. Upon written request by the Contract Administrator,

copies of such documentation shall be provided to the CITY within ten (10) Residential Service Work Days of the request.

- H. **Reserve Equipment.** The CONTRACTOR shall have available to it, at all times, a reasonable number of reserve Collection equipment which can, to the extent needed to complete the Collection route, be dispatched within one (1) hour of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the CONTRACTOR to perform the contractual duties.
- I. **Covering of Loads.** All loads not in covered body trucks shall be tarped or restrained to prevent spilling.
- J. **Weight Restrictions.** The CONTRACTOR shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles. The CONTRACTOR acknowledges that the CITY may document compliance with this provision of this Agreement through review of scale tickets and records of the Transfer Station, MRF, Organic Materials Processing Facility and Disposal Facility.

#### 7.10 CONTAINER REQUIREMENTS

- A. **SFD Carts.** The CONTRACTOR will provide each SFD with new, wheeled Carts for automated collection of Solid Waste, Recyclable Material and Green Waste. The default service level will be a 96-gallon Cart for each material type Collected weekly. The CONTRACTOR must provide a 64- or a 32-gallon Cart as a substitute depending on the Customer's preference and need. No discount will be given for using smaller Carts. Customers may add additional Carts for Solid Waste Collection as may be needed at an additional charge. Customers will be required to place the Cart(s) curbside for collection. Solid waste collection service is mandatory for all service locations.
- B. **Purchase and Distribution of Carts and Bins.** The CONTRACTOR shall be responsible for the purchase and distribution of fully assembled and functional Carts and Bins to Service Units in the Service Area. The CONTRACTOR shall also distribute Carts and Bins to new Service Units that are added to the CONTRACTOR's Service Area during the Term of this Agreement. The distribution shall be completed within their next Service Day. The CONTRACTOR shall offer animal-proof Carts and Bins for an additional amount not exceeding the applicable Maximum Service Rates set forth in Exhibit 1 to this Agreement.
- C. **Replacement of Carts and Bins.**
  - 1. The CONTRACTOR's employees shall take care to prevent damage to Carts or Bins by unnecessary rough treatment. However, any Cart or Bin damaged by the CONTRACTOR shall be replaced by the CONTRACTOR, at the CONTRACTOR's expense, within three (3) Residential Service Work Days after notification by the CITY or the Service Recipient, at no cost or inconvenience to the Service Recipient or to the CITY.
  - 2. Upon notification to the CONTRACTOR by the CITY or a Service Recipient that the Service Recipient's Cart(s) or Bin(s) are faulty or have worn out, or have

been stolen or damaged beyond repair through no fault of the Service Recipient, the CONTRACTOR shall deliver a replacement Cart(s) or Bin(s) to such Service Recipient within three (3) Residential Service Work Days. There shall be no charge to the Service Recipient for the delivery or replacement of the Cart(s) or Bin(s).

In those instances where the CONTRACTOR can demonstrate that a Cart(s) or Bin(s) was damaged or stolen as the result or product of negligence on the part of the Service Recipient, the CONTRACTOR shall be entitled to bill the Service Recipient the cost of the Cart(s) or Bin(s) plus the delivery charge in an amount not exceeding the applicable Maximum Service Rates set forth in Exhibit 1 to this Agreement.

3. The CONTRACTOR shall maintain records documenting all Cart and Bin replacements occurring on a monthly basis. Such information shall be provided to the Contract Administrator upon written request.
- D. Repair of Carts and Bins.** The CONTRACTOR shall be responsible for repair of Carts and Bins in the Service Area including but not be limited to, hinged lids, wheels and axles. Within three (3) Residential Service Work Days of notification by the CITY or a Service Recipient of the need for such repairs, the CONTRACTOR shall repair the Cart or Bin, or if necessary, remove the Cart or Bin for repairs and deliver a replacement Cart or Bin to the Service Recipient.
- E. Cart or Bin Exchange.** Upon notification to the CONTRACTOR by the CITY or a Service Recipient that a change in the size or number of Carts or Bins is required, the CONTRACTOR shall deliver such Carts or Bins to such Service Recipient no later than the Service Recipient's next regularly scheduled Collection day. Each SFD Service Unit shall be entitled to receive one (1) free Solid Waste Cart exchange; one (1) free Recycling Cart exchange; and one (1) free Green Waste Cart exchange per Agreement Year during the Term of this Agreement. Each MFD, Commercial or CITY Service Unit shall be entitled to receive one (1) free Solid Waste Cart or Bin exchange, and to the extent such Carts or Bins are provided by the CONTRACTOR under the terms of this Agreement, one (1) free Recycling Cart or Bin exchange, one (1) free Organics Material Cart or Bin exchange per Agreement Year during the Term of this Agreement. Accordingly, the CONTRACTOR shall be entitled to charge for exchanges in excess of the limit set forth above per Agreement Year, at a rate not exceeding the "Cart or Bin Exchange" Maximum Service Rate as set forth in Exhibit 1, as adjusted under the terms of this Agreement.
- F. Additional Solid Waste Capacity.** Upon notification to the CONTRACTOR by the CITY or a Service Recipient that additional Solid Waste capacity is requested, the CONTRACTOR shall comply by delivering a larger Cart, an additional Cart, larger Bin or an additional Bin, to such Service Recipient within ten (10) Residential Service Work Days. The CONTRACTOR shall be entitled to charge for the cost of the additional Solid Waste capacity in an amount not exceeding the applicable Maximum Service Rate for the larger capacity or Additional Cart or Bin as set forth in Exhibit 1, as adjusted under the terms of this Agreement.

- G. Additional Recycling Capacity.** The CONTRACTOR shall provide one additional Recycling Cart to SFD Service Units requesting an additional Cart within ten (10) Residential Service Work Days of the request at no additional cost provided that the additional capacity is used by the SFD Service Unit for the purposes of setting out additional Recyclable Materials that are generated by and at the SFD Service Unit for regular biweekly Recyclable Material Collection Service. The CONTRACTOR shall be entitled to charge for any additional Recycling Carts beyond the first additional Cart for a fee set forth in the Maximum Service Rates.
- 1. Pickup of Underutilized Additional Recyclable Carts.** If the CONTRACTOR's vehicle driver reports, and the CONTRACTOR's customer service representative enters into the Customer's account records, that the Customer does not set out an additional Recyclable Cart more than once a month for two (2) consecutive months, then the CONTRACTOR may leave a notice stating that the CONTRACTOR will pick up the Customer's unused or under-utilized additional Recyclable Cart unless the Customer sets out that additional Cart at least every other week.
- H. Additional Green Waste Capacity. The CONTRACTOR** shall provide one additional Green Waste Cart to SFD Service Units requesting an additional Cart within ten (10) Residential Service Work Days of the request at no additional cost provided that the additional capacity is used by the SFD Service Unit for the purposes of setting out additional Green Waste Materials that are generated by and at the SFD Service Unit for regular biweekly Green Waste Collection Service. The CONTRACTOR shall be entitled to charge extra for any additional Green Waste Carts beyond the first additional Cart for a fee set forth in the Maximum Service Rates.
- 1. Pickup of Under-utilized Additional Green Waste Carts.** If the CONTRACTOR's vehicle driver reports, and the CONTRACTOR's customer service representative enters into Customer's account records, that Customer does not set out an additional Green Waste Cart more than once a month for two (2) consecutive months, then the CONTRACTOR may leave a notice stating that the CONTRACTOR will pick up the Customer's unused or under-utilized additional Green Waste Cart unless Customer sets out that additional Cart at least every other week.
- I. Ownership of Carts.** Ownership of Carts shall rest with the CONTRACTOR, except that, in the case of the termination of this Agreement prior to the expiration of the initial Term or optional extension Terms due to the default of the CONTRACTOR as set forth in Article 12 of this Agreement, the CITY shall have the right to take possession of the Carts and retain such possession under the terms and conditions described in Article 12. Upon the receipt of written notice from the CITY, the CONTRACTOR shall submit to the Contract Administrator an inventory of Carts, including their locations.
- J. Ownership of Bins.** Ownership of Bins distributed by the CONTRACTOR shall rest with the CONTRACTOR except in the case of the termination of this Agreement prior to the expiration of the initial Term or optional extension Terms due to the default of the CONTRACTOR as set forth in Article 12 of this Agreement. Under such circumstances,



the CITY shall have the right to take possession of the Bins and retain such possession under the terms and conditions described in Article 12. Upon the receipt of written notice from the CITY, the CONTRACTOR shall submit to the Contract Administrator an inventory of Bins, including their locations.

**K. New Service Units.**

- 1. Purchase and Distribution of Carts and Bins.** The CONTRACTOR shall be responsible for the purchase and distribution of fully assembled and functional Carts and Bins to new Service Units that are added to the CONTRACTOR's Service Area during the Term of this Agreement. The distribution shall be completed within three (3) Residential Service Work Days of receipt of notification from the CITY or the Service Unit.
- 2. Collection Services.** The CONTRACTOR shall provide Collection Services described in this Agreement to new Service Units on the next regularly scheduled Collection day following delivery of the Carts or Bins.

- L. Annual Inspection and Cleaning.** Once each Agreement Year, at no charge to the CITY, MFD or Commercial Service Unit, the CONTRACTOR shall provide, upon request or as deemed necessary, the cleaning of Bins. In the event a Customer requests the CONTRACTOR to provide Bin cleaning more than one (1) time per Agreement Year, the CONTRACTOR shall have the right to charge the Customer an amount not exceeding the Maximum Service Rate for Bin Cleaning set forth in Exhibit 1.

## **7.11 LABOR AND EQUIPMENT**

The CONTRACTOR shall provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall at all times have sufficient backup equipment and labor to fulfill the CONTRACTOR's obligations under this Agreement. No compensation for the CONTRACTOR's services or for the CONTRACTOR's supply of labor, equipment, tools, facilities or supervision shall be provided or paid to the CONTRACTOR by the CITY or by any Service Recipient except in accordance with this Agreement.

## **7.12 HOLIDAY SERVICE**

The CONTRACTOR shall provide normal Collection Services without regard to any Holidays, with the exception of New Year's Day, Thanksgiving Day and Christmas Day. There will be no collection on these three Holidays and a one-day delay for the remainder of each of these three Holiday weeks.

## **7.13 DISPOSAL AND PROCESSING**

- A. Solid Waste.** Except as set forth below, all Solid Waste Collected as a result of performing Collection Services shall be transported to the Transfer Station or the Disposal Facility and eventually disposed of at the Disposal Facility. In the event the Disposal Facility is closed on a Commercial Service Work Day, the CONTRACTOR shall transport and dispose of the Solid Waste at such other legally permitted disposal facility as is approved by the CITY. Notwithstanding any other provision of this Agreement, if a

Disposal Facility other than the designated Disposal Facility is used, and it is not owned/operated by the CONTRACTOR or its Affiliate (it being understood that such other Disposal Facility would need to be selected by the CONTRACTOR and approved by the CITY, or specifically designated by the CITY), then the CONTRACTOR's obligations hereunder will not include the landfilling of the Solid Waste (which will be the responsibility of the Disposal Facility operator).

- B. Recyclable Materials.** All Recyclable Materials Collected as a result of performing Collection Services shall be delivered to the Materials Recovery Facility (MRF). In the event the MRF is closed on a Commercial Service Work Day, the CONTRACTOR shall transport and deliver the Recyclable Material to such other legally permitted MRF as is approved by the CITY. The CONTRACTOR shall ensure that all Recyclable Materials Collected pursuant to this Agreement that are expressly listed in Exhibit 6 (including those materials added by the CONTRACTOR to such list from time to time), except Residue resulting from processing, are diverted from the Disposal Facility in accordance with current and subsequent legislation and regulations. Notwithstanding any other provision of this Agreement, if an MRF other than the designated Transfer Station is used that is not owned/operated by the CONTRACTOR or its Affiliate (it being understood that such other MRF would need to be selected by the CONTRACTOR and approved by the CITY, or specifically designated by the CITY), then the CONTRACTOR's obligations hereunder will not include processing and marketing of Recyclable Materials (which will be the responsibility of the MRF operator).
- C. Organic Materials.** All Organic Materials, including Green Waste and Food Waste Collected as a result of performing Collection Services shall be delivered to the designated Organic Materials Processing Facility. In the event the facility is closed on a Commercial Service Work Day, the CONTRACTOR shall transport and deliver the Organic Materials to such other legally permitted Organic Materials Processing Facility as is approved by the CITY. The CONTRACTOR shall ensure that all Organic Materials Collected pursuant to this Agreement, except Residue resulting from processing, is diverted from the Disposal Facility in accordance with current and subsequent legislation and regulations. Notwithstanding any other provision of this Agreement, if an Organic Materials Processing Facility other than the designated Organic Materials Processing Facility is used that is not owned/operated by the CONTRACTOR or its Affiliate (it being understood that such other Organic Materials Processing Facility would need to be selected by the CONTRACTOR and approved by the CITY, or specifically designated by the CITY), then the CONTRACTOR's obligations hereunder will not include processing and marketing of Organic Materials (which will be the responsibility of the Organic Facility operator).
- D. Bulky Items.** All Bulky Items Collected as a result of performing Collection Services shall be delivered to the designated Approved Facility.

  - 1. Bulky Items Containing Freon.** In the event the CONTRACTOR Collects Bulky Items that contain freon, the CONTRACTOR shall handle such Bulky Items in a manner such that the Bulky Items are not subject to regulation as Hazardous Waste under federal, State and/or CITY Applicable Laws or regulations.

#### **7.14 SOLID WASTE - IMPROPER PROCEDURE**

Except as set forth below, the CONTRACTOR shall not be required to Collect Solid Waste if the Service Recipient does not segregate the Solid Waste from Exempt Waste. If Solid Waste is contaminated through commingling with Exempt Waste, the CONTRACTOR shall, if practical, separate the Solid Waste from the contaminants. The Solid Waste shall then be Collected and the contaminants shall be left in the Solid Waste Cart or Bin along with a Non-Collection Notice explaining why the contaminant(s) is not considered Solid Waste. However, in the event the Solid Waste and contaminants are commingled to the extent that they cannot easily be separated by the CONTRACTOR or the nature of the contaminants renders the entire Solid Waste Cart or Bin contaminated, the CONTRACTOR may; 1) Collect the Solid Waste and leave a Non-Collection Notice that contains instructions on the proper procedures for setting out Solid Waste or; 2) leave the Solid Waste Cart or Bin un-emptied along with a Non-Collection Notice that contains instructions on the proper procedures for setting out Solid Waste. On the third (3<sup>rd</sup>) time that the CONTRACTOR finds that a Service Unit has set out contaminated Solid Waste, the CONTRACTOR may leave the Solid Waste Cart or Bin un-emptied along with a Non-Collection Notice that contains instructions on the proper procedures for setting out Solid Waste and reduce the service at that Service Unit to the minimum level available by exchanging the Solid Waste Container without the authorization of the Customer.

#### **7.15 RECYCLING - IMPROPER PROCEDURE**

Except as set forth below, the CONTRACTOR shall not be required to Collect Recyclable Materials if the Residential or Commercial Service Recipient does not segregate the Recyclable Materials from Solid Waste, Green Waste, Exempt Waste or Construction and Demolition Debris. The first (1<sup>st</sup>) time Recyclable Materials are contaminated through commingling with Solid Waste, Green Waste, Exempt Waste or Construction and Demolition Debris, the CONTRACTOR shall contact the Customer to discuss the contamination and shall Collect the Container and cause the material contained therein to be disposed or processed in the most appropriate manner. On the second (2<sup>nd</sup>) time that the CONTRACTOR finds that a Service Unit has set out contaminated Recyclable Materials, the CONTRACTOR shall contact the Customer to discuss the contamination and shall Collect the Container and cause the material contained therein to be disposed or processed in the most appropriate manner. In addition, the CONTRACTOR may, without the authorization of the Customer, remove the Recycling Cart(s) or Bin(s) and stop Collecting Recyclable Materials from that Residential or Commercial Service Unit.

- A. Recycling - Changes to Work.** Should changes in law arise that necessitate any additions or deletions to the work described herein including the type of items included as Recyclable Materials, the parties shall negotiate any necessary cost changes and adjustment in Maximum Service Rates pursuant to Article 5.5 and shall enter into an Agreement amendment covering such modifications to the work to be performed and the adjustment to Maximum Service Rates before undertaking any changes or revisions to such work.

#### **7.16 ORGANIC MATERIALS - IMPROPER PROCEDURE**

Except as set forth below, the CONTRACTOR shall not be required to Collect Organic Materials if the Service Recipient does not segregate the Organic Materials from Solid Waste, Recyclable Materials,

Exempt Waste or Construction and Demolition Debris. The first (1<sup>st</sup>) time Organic Materials is contaminated through commingling with Solid Waste, Recyclable Materials, Exempt Waste or Construction and Demolition Debris, the CONTRACTOR shall contact the Customer to discuss the contamination and shall Collect the Container and cause the material contained therein to be disposed or processed in the most appropriate manner. On the second (2<sup>nd</sup>) time that the CONTRACTOR finds that a Service Unit has set out contaminated Organic Materials, the CONTRACTOR shall contact the Customer to discuss the contamination and shall Collect the Container and cause the material contained therein to be disposed or processed in the most appropriate manner. In addition, the CONTRACTOR may, without the authorization of the Customer, remove the Organic Materials Cart(s) and Bin(s) and stop Collecting Organic Materials from that Service Unit.

#### **7.17 COMMINGLING OF MATERIALS**

- A. Solid Waste, Recyclable Materials, and Organic Materials.** The CONTRACTOR shall not commingle Solid Waste Collected pursuant to this Agreement with any Recyclable Materials or Organic Materials separated for Collection pursuant to this Agreement prior to delivery to the Transfer Station, MRF, Organic Materials Processing Facility or Disposal Facility as appropriate, without the express prior written authorization of the Contract Administrator.
- B. Solid Waste Material Collected in the Service Area.** The CONTRACTOR shall not commingle any Solid Waste Collected pursuant to this Agreement with any other material Collected by the CONTRACTOR outside the CITY Service Area prior to delivery to the Transfer Station, MRF, Organic Materials Processing Facility or Disposal Facility as appropriate, unless the CONTRACTOR has provided documentation that is satisfactory to the Contract Administrator explaining how the commingled material will be allocated.
- C. Recyclable Materials Collected in the Service Area.** The CONTRACTOR shall not commingle Recyclable Materials Collected pursuant to this Agreement with any other material Collected by the CONTRACTOR outside the CITY Service Area prior to delivery to the Transfer Station, MRF, or Disposal Facility as appropriate, unless the CONTRACTOR has provided documentation that is satisfactory to the Contract Administrator explaining how the commingled material will be allocated.
- D. Organic Materials Collected in the Service Area.** The CONTRACTOR shall not commingle Organic Materials Collected pursuant to this Agreement with any other material Collected by the CONTRACTOR outside the CITY Service Area prior to delivery to the Transfer Station, Organic Material Processing Facility or Disposal Facility as appropriate, unless the CONTRACTOR has provided documentation that is satisfactory to the Contract Administrator explaining how the commingled material will be allocated.
- E. Material Separation.** Solid Waste, Recyclable Materials, Organic Materials, Bulky Items and C&D Debris shall not be mixed together in the CONTRACTOR's Collection equipment unless such material has been deemed contaminated in which case it shall be Collected as Solid Waste. Each category of material Collected shall be kept separated according to type or classification except for such material that has been deemed contaminated in which case it shall be classified as Solid Waste.

## 7.18 PERSONNEL

- A. General Personnel Requirements.** The CONTRACTOR shall employ and assign qualified personnel to perform all services set forth herein. The CONTRACTOR shall be responsible for ensuring that its employees comply with all Applicable Laws and regulations and meet all federal, state and local requirements related to their employment and position.

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

The CONTRACTOR shall use its best efforts to assure that all employees who interact with Customers present a neat appearance and conduct themselves in a courteous manner. The CONTRACTOR shall not permit its employees to accept, demand, or solicit, directly or indirectly, any additional compensation, or gratuity from members of the public.

The CONTRACTOR shall designate at least one (1) qualified employee as the CITY's primary point of contact with CONTRACTOR who is principally responsible for Collection operations and resolution of service requests and complaints. CONTRACTOR shall immediately inform CITY of any changes in the designated primary point of contact.

- B. Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued by the Nevada Department of Motor Vehicles.
- C. Safety Training.** The CONTRACTOR shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment. The CONTRACTOR shall train its employees involved in Collection to identify, and not to collect, Exempt Waste. Upon the Contract Administrator's request, the CONTRACTOR shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.

## 7.19 HAZARDOUS WASTE INSPECTION AND HANDLING

- A. Inspection Program and Training.** The CONTRACTOR shall develop a load inspection program that includes the following components: (i) personnel and training; (ii) load checking activities; (iii) management of wastes; and, (iv) record keeping and emergency procedures.

The CONTRACTOR's load checking personnel, including its Collection vehicle drivers, shall be trained in: (i) the effects of Hazardous Substances on human health and the environment; (ii) identification of prohibited materials; and, (iii) emergency notification and response procedures. Collection vehicle drivers shall inspect Containers before Collection when practical.

- B. Response to Exempt Waste Identified During Collection.** If the CONTRACTOR determines that material placed in any Container for Collection is Exempt Waste or presents a hazard to the CONTRACTOR's employees, the CONTRACTOR shall have the

right to refuse to accept such material. The Generator shall be contacted by the CONTRACTOR and requested to arrange proper Disposal. If the Generator cannot be reached immediately, the CONTRACTOR shall, before leaving the Premises, leave a tag at least two (2) inches by six (6) inches in size, which indicates the reason for refusing to Collect the material and lists the phone number of a facility that accepts the Exempt Waste or a phone number of an entity that can provide information on proper Disposal of the Exempt Waste. Under no circumstances shall CONTRACTOR's employees knowingly Collect Exempt Waste or remove unsafe or poorly containerized Exempt Waste from a Collection Container. Prior to the Commencement Date of this Agreement, the tag that will be used to notice Customers of reason for non-Collection shall be reviewed and approved by the Contract Administrator. If Exempt Waste is found in a Collection Container or Collection area that could possibly result in imminent danger to people or property, the CONTRACTOR shall immediately notify the Fire Department.

- C. Response to Exempt Waste Identified at Disposal or Processing Facility.** Materials Collected by the CONTRACTOR will be delivered to the Approved Facilities for purposes of Processing or Disposal. In the event that load checkers and/or equipment operators at such facility identify Exempt Waste in the loads delivered by the CONTRACTOR, such personnel shall remove these materials for storage in approved, on-site, Exempt Waste storage Container(s). The CONTRACTOR shall arrange for removal of the Exempt Wastes at its cost by permitted haulers in accordance with Applicable Laws and regulatory requirements. The CONTRACTOR may at its sole expense attempt to identify and recover the cost of Disposal from the Generator. If the Generator can be successfully identified, the cost of this effort, as well as the cost of Disposal shall be chargeable to the Generator.

## **ARTICLE 8: BILLING, CUSTOMER SERVICE, RECORD KEEPING, AND REPORTING**

### **8.1 BILLING AND COLLECTION**

The CONTRACTOR shall be solely responsible for the billing and collection of payments for all Collection Services, including billing of the CITY for any services provided in excess of those CITY Collection Services specified in Article 5.9. The CONTRACTOR shall charge Service Recipients an amount which shall not exceed the Maximum Service Rates attached in Exhibit 1 to this Agreement as adjusted under the terms of this Agreement. The CITY or Contract Administrator shall have the right to review and approve the format of all Customer bills. The CONTRACTOR shall be entitled to set rates for all services provided pursuant to this Agreement, provided that such rates do not exceed the Maximum Service Rates set forth in Exhibit 1, as adjusted under the terms of this Agreement. Charges to Service Recipients are due and payable as follows: (i) Single-Family Service Units will be delinquent on the 91st day after CONTRACTOR's invoice date, (ii) Commercial and Multi-Family Service Units will be delinquent on the

31st day after CONTRACTOR's invoice date, and (iii) Temporary Bin Collection Service customers will be delinquent on the 31<sup>st</sup> day after CONTRACTOR's invoice date. A monthly late fee of \$15.00 or 2.5 percent, whichever is greater, will be applied to all unpaid balances.

Unless otherwise expressly provided, all references to Exhibit 1 in this Agreement shall be deemed to refer to such exhibit as adjusted from time to time in accordance with the provisions of this Agreement.

- A. Partial Month Service.** If, during a month, a Service Unit is added to or deleted from the CONTRACTOR's Service Area, the CONTRACTOR's billing shall be pro-rated by dividing the monthly rate for the service provided to the Service Unit by four (4) and multiplying the result by the number of actual weeks in the month that service was provided to the Service Unit.
- B. Billing Inserts.** The CITY may provide educational and other material to the CONTRACTOR for inclusion in the invoices provided by the CONTRACTOR to SFD, MFD and Commercial Customers for Collection Services. The CONTRACTOR may charge the CITY for ~~the insertion and~~ any extra postage charges required due to the size of the for educational or other CITY-provided materials ~~provided for distribution in the invoices.~~

## **8.2 DELINQUENT SERVICE ACCOUNTS**

The CONTRACTOR may take such action as is legally available to collect or cause collection of such past due amounts, including discontinuing any or all service and/or removing Carts, containers or Bins for Commercial Service Units. However, CONTRACTOR may not discontinue providing Recycling, Green Waste, or Solid Waste Collection Services to an SFD Service Unit or an MFD Service Unit. Instead, the CONTRACTOR may take such action as is legally available, including a lien against a property, as set forth in [NRS 444.520](#) unless the CITY has approved a collection service exemption for the subject property.

## **8.3 ACCOUNT SUSPENSION**

SFD Customers may contact the CONTRACTOR to suspend services for the following reasons: vacant lot, anticipated vacancy longer than two (2) calendar months or anticipated vacation account suspension for a minimum of one (1) month. In the case of vacancy, the CONTRACTOR shall be allowed to charge an account activation or restart fee upon resumption of services, subject to exceptions shown in Exhibit 1 of this Agreement. In the case of a vacation account suspension, the CONTRACTOR shall not charge a maintenance fee, account activation or restart fee. CONTRACTOR shall be notified of vacation account suspensions in advance, with a beginning and ending date which shall not exceed six (6) months.

## **8.4 MANDATORY SFD SERVICE EXEMPTION**

SFD Customers able to demonstrate landfill usage through the provision of monthly landfill receipts from the previous six (6) calendar months in year one of the Agreement and from the previous 12 calendar months in each subsequent Agreement Year may request an exemption from mandatory SFD Service. A request form shall be provided by the CONTRACTOR at the request of a resident. The completed form shall be submitted by the resident, with required documentation, to the CONTRACTOR

for review. The CONTRACTOR shall include a list SFD Service exemption requests, including the name of the resident, the address, whether the request was approved or denied, and reason for denials, if any, in each ~~monthly~~quarterly report.

#### **8.5 LOW-INCOME SENIOR CITIZEN MAXIMUM SERVICE RATES**

The CONTRACTOR shall provide SFD Collection Services to qualified low-income senior citizens upon request at a rate set at 75% of the established solid waste rate for SFD Collection Service and not exceeding the Maximum Service Rate for such service set forth in Exhibit 1. The qualification requirements for the low-income senior citizen rates include all of the following: (i) head of household; (ii) minimum of 62 years of age; and, (iii) an adjusted gross income for the household at or below one hundred-fifty (150) percent of the current Federal Poverty Guidelines for the 48 Contiguous States and the District of Columbia for the applicable size of family unit.

- A.** To demonstrate conformity with the qualification requirements, the CONTRACTOR shall require applicants to complete an application form provided by the CONTRACTOR and provide copies of photo identification showing proof of age and the first and second pages of Form 1040, U.S. Individual Income Tax Return for the previous calendar year, or other suitable documentation to verify household income.
- B.** Eligibility shall be granted for a specified period not to exceed two (2) years after which the CONTRACTOR shall require applicant to re-certify as to their continued eligibility. The CONTRACTOR shall require approved applicants to provide notification if and when their eligibility qualification status changes.

#### **8.6 NON-DISCLOSURE**

The CONTRACTOR will not disclose to any Person other than the CITY any information identifying an individual Customer, the composition or contents of a Customer's Discarded Material, or a Customer's trade secrets unless upon the authority of a law, or pursuant to written authorization of the Customer.

#### **8.7 NO MARKETING**

The CONTRACTOR will not market or distribute mailing lists with the name or address of Customers. The CONTRACTOR's obligations under this subsection are in addition to any other privacy rights accorded Customers under Applicable Law.

#### **8.8 CUSTOMER SERVICE STAFFING AND HOURS**

The CONTRACTOR shall maintain a publicly accessible office located within the CITY Service Area that provides telephone access to residents and businesses of the CITY and is staffed by trained and experienced Customer Service Representatives (CSRs). Such office shall be equipped with sufficient telephones so that all Collection Service related calls received during normal business hours are answered by an employee within five (5) rings; shall have responsible Persons in charge during Collection hours; and shall be open during normal business hours, which are currently 8:00 a.m. to 5:00 p.m., Monday through Friday, except for Holidays. Office hours may be adjusted at the discretion of the CONTRACTOR only after appropriate notification is provided to all Customers and provided that offices



are open for business at least eight (8) hours per day Monday through Friday, except for Holidays. The CONTRACTOR shall provide either a telephone answering service or a mechanical device to receive Service Recipient inquiries during those times when the office is closed. Calls received after normal business hours shall be addressed the next morning the office is open.

## **8.9 CONTRACTOR'S CUSTOMER SERVICE**

All service inquiries and complaints shall be directed to the CONTRACTOR. A representative of the CONTRACTOR shall be available to receive the complaints during normal business hours. All service complaints will be handled by the CONTRACTOR in a prompt, courteous, and efficient manner.

- A. Response Requirement.** For those complaints related to missed Collections that are received by 2:00 p.m. on a Residential Service Work Day, the CONTRACTOR will return to the Customer address and Collect the missed materials before leaving the Service Area for the day. For those complaints related to missed Collections that are received after 2:00 p.m. on a Residential Service Work Day, the CONTRACTOR shall have until the end of the following Residential Service Work Day to resolve the complaint. For complaints related to repair or replacement of Carts or Bins, the CONTRACTOR shall resolve the complaint according to the requirements described in Article 7.10 C.
- B. Missed Collections.** The CONTRACTOR agrees that it is in the best interest of the CITY that all Solid Waste, Recyclable Materials and Organic Materials be Collected on the scheduled Collection day. Accordingly, missed Collections will normally be Collected as set forth above regardless of the reason that the Collection was missed. However, in the event a Customer requests missed Collection service more than two (2) times during the Term of this Agreement the CONTRACTOR shall contact the Customer to determine an appropriate resolution to that situation.
- C. Emergency Contact.** The CONTRACTOR shall provide the Contract Administrator with an emergency phone number where the CONTRACTOR can be reached outside of the required office hours.
- D. Multilingual/TDD Service.** The CONTRACTOR shall at all times maintain the capability of responding to telephone calls in English and Spanish as may be directed by CITY. The CONTRACTOR shall also at all times maintain the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.
- E. Service Recipient Calls.** During office hours, the CONTRACTOR shall maintain a telephone answering system capable of accepting at least seven (7) incoming calls at one (1) time. The CONTRACTOR shall document calls regarding inquiries, service requests and complaints through the use of the CONTRACTOR's ticket report system.
- F. Response to Calls.** All incoming calls shall be answered by a Customer Service Representative within five (5) rings. Customers shall not be placed "on-hold" in excess of one and one half (1.5) minutes.
- G. Website.** The CONTRACTOR shall develop and maintain a website dedicated to services provided in the CITY that is accessible by the public. The web site shall include answers to frequently asked questions; rates for Collection Services; Recyclable Materials and Organic Materials specifications; proper Household Hazardous Waste disposal procedures; and other related topics. CITY shall arrange for the CITY's website to include

an e-mail link to the CONTRACTOR and a link to the CONTRACTOR's website. The CONTRACTOR's website shall provide the public the ability to e-mail complaints to the CONTRACTOR and request services or service changes.

- H. **Hazardous Waste Referrals.** The CONTRACTOR shall provide information regarding the Collection of Hazardous Waste to those Service Recipients requesting such information. The information shall at a minimum include the name and phone number of those companies or agencies in the CITY Service Area that are legally permitted to Collect and transport Hazardous Waste.
- I. **Automated Billing Payment.** In an effort to reduce paper waste, the CONTRACTOR shall make available to all Customers an automated billing and payment system at no additional charge. This system should be website based and allow Customers to view and pay bills through CONTRACTOR's website. Through the CONTRACTOR's website, Customers may request to cease paper billing and receive all bills through e-mail and/or CONTRACTOR's website. The CONTRACTOR will ensure that the electronic billing and payment website conforms to industry-standard practices for electronic commerce security. The CONTRACTOR must ensure that these Customers are compiled in a list to ensure that billing inserts are mailed directly. The CONTRACTOR shall promote the website-based billing and payment system on all paper bills sent to Customers.

#### 8.10 RECORD KEEPING

- A. **Accounting Records.** The CONTRACTOR shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection Services provided under this Agreement, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records, to the extent necessary to verify compliance with this Agreement, shall be subject to audit, copy, and inspection. Gross Billings derived from provision of the Collection Services, including revenues from the sale of Recyclable Materials, including CRV revenue or revenue from the sale of Composted material, whether such services are performed by the CONTRACTOR or by an approved Subcontractor(s) as set forth in Exhibit 5, shall be recorded as revenues in the accounts of the CONTRACTOR. These records shall be maintained separate from the CONTRACTOR's records for services provided outside the Service Area. The CONTRACTOR shall maintain and preserve all cash, billing and disposal records for a period of not less than eight (8) years following the close of each of the CONTRACTOR's fiscal years.
- B. **Agreement Materials Records.** The CONTRACTOR shall maintain records of the quantities of (i) SFD, MFD, Commercial and the CITY Solid Waste and Construction and Demolition Debris Collected and Disposed under the terms of this Agreement; (ii) Recyclable Materials, by type, Collected, purchased, Processed, sold, donated or given for no compensation, and Residue Disposed; (iii) Green Waste Collected, Processed, sold, donated or given for no compensation, and Residue Disposed; (iv) Organic Materials Collected, Processed, sold, donated or given for no compensation, and Residue Disposed; and, (v) C&D Debris Collected, Processed, sold, donated or given for no compensation, and Residue Disposed for a period of not less than eight (8) years following the close of each of the CONTRACTOR's fiscal years.

## 8.11 REPORTING REQUIREMENTS

Quarterly reports shall be submitted to the Contract Administrator no later than forty-five (45) calendar days after the end of the reporting quarter and annual reports shall be submitted to the Contract Administrator no later than August 15th after the end of each preceding Agreement Year. Quarterly and annual reports shall be submitted in hard copy or provided electronically via e-mail if acceptable to the CITY.

- A. **Quarterly Reports.** Quarterly reports to the CITY shall be on a calendar quarter basis and shall include:
  - 1. **Service Data.** The CONTRACTOR shall report on all Solid Waste disposal and diversion data; all complaints and compliments; all exemption requests; and, any other data associated with the provision of services as requested by the CITY Administrator.
  - 2. **Public Education and Information Activities.** The CONTRACTOR shall report on all public education and information activities undertaken during the period, including distribution of printed materials, ads, other notices, collection notification tags, community information and events, school visits, tours and other activities related to the provision of Collection Services.
  - 3. **Customer Base Data.** The CONTRACTOR shall provide customer base data consisting of the number of SFD, MFD, and Commercial Service Units and C&D Services billed and the CITY Collection Services provided including service type (Solid Waste, Recyclables, etc.), Container size, number of Containers, and frequency of Collection.
- B. **Annual Report.** The quarterly reports shall be consolidated into an annual report.
- C. **Annual Account Data Report.** The annual account data report to the CITY shall include the number of SFD, MFD, Commercial and the CITY Service Units and Bulky Item Collection accounts serviced with the number of Solid Waste, Recycling, Green Waste and Organic Materials Containers serviced for each category.
- D. **Additional Reporting.** The CONTRACTOR shall furnish the CITY with any additional reports as may reasonably be requested by CITY to the extent necessary to verify compliance with this Agreement regarding CONTRACTOR's operations hereunder, such reports to be prepared within a reasonable time following the reporting period.

## 8.12 AUDIT REQUIREMENT

The CONTRACTOR shall arrange for an independent audit of the CONTRACTOR's payments, operations and financial records upon completion of the third year of the contract. The audit shall be completed before December 31, 2022. The CONTRACTOR shall obtain approval from the CITY regarding the intended auditor prior to the start of the audit. All costs of the audit shall be paid by the CONTRACTOR. The CONTRACTOR shall permit the approved auditor and/or its representatives to ride in the Collection vehicles, to inspect records consistent with the terms of this Agreement and to review and inspect all other information and facilities necessary to conduct the audits. If the audit results in no findings, the next audit shall be conducted after five (5) years. The audit shall be conducted according to the requirements described above and shall be completed before December 31, 2027. However, if inaccuracies are found, the CONTRACTOR shall remedy all such inaccuracies and the CITY may require a follow-up audit upon the completion of the subsequent contract year, to be completed before

December 31, 2023, according to the terms described above, to confirm that all inaccuracies from the prior audit have been fully remedied and have not been repeated. Subsequent audits shall be conducted either the following year if inaccuracies persist, or after five years if there are no further findings, through the Term of the Agreement and during an extension of the initial Term, as described in Article 3.2.

## **ARTICLE 9: FRANCHISE FEES AND OTHER FEES**

### **9.1 FRANCHISE FEE**

The Parties acknowledge that certain solid waste management, Recycling and associated services are provided by the CITY in connection with this Agreement, which are part of a comprehensive program of activities designed to effectuate the purpose of this Agreement. To reimburse the CITY for the costs of such services, including CITY's costs incurred in administering this Agreement, and in consideration of the exclusive franchise granted to the CONTRACTOR by this Agreement, the CONTRACTOR shall pay the CITY a franchise fee. The franchise fee shall be a percentage of the CONTRACTOR's Gross Receipts net of surcharge fees billed each month under the terms of this Agreement. For purposes of calculating franchise fees, Gross Receipts shall specifically include revenue billed by the CONTRACTOR for the provision of Collection Services by the CONTRACTOR, and exclude surcharge fees. The franchise fee percentage shall be eight (8) percent unless otherwise adjusted by the CITY. Three (3) percent of the eight (8) percent franchise fee will be allocated to address road maintenance and operational impacts. In the event that the CITY adjusts the franchise fee percentage, CITY shall adjust the Maximum Service Rates to incorporate any such changes in the franchise fee percentage prior to the time that the new franchise fee percentage becomes effective. To give effect to the intent of the 3rd, 4th and 5th sentences of this paragraph, the Parties agree that the franchise fee charged to the CONTRACTOR shall be calculated by dividing the base service rate element of each Maximum Service Rate by one (1) minus the franchise fee percentage (for example  $1.00 - .08 = 0.92$ ); subtracting the base service rate element; and rounding the resulting figure to two (2) decimal places. If the base service rate element of a Maximum Service Rate changes for any reason, the franchise fee element will be recalculated.

### **9.2 CONTRACTOR'S PAYMENTS TO CITY**

The CONTRACTOR shall make payment to the CITY of the fees set forth in Articles 9.2 and 9.3. Payment to the CITY shall be due quarterly on the twentieth (20<sup>th</sup>) day of the month following each three-month period (quarter) during which revenues are billed. Each such payment shall be accompanied by an accounting that sets forth CONTRACTOR's Gross Billings during the preceding quarter. Payments shall be sent to the Carson City Treasurer's Office, 201 N. Carson Street, Carson City, NV 89701, which location may be changed as directed by the CITY. The CONTRACTOR shall conduct regular billing audits not less than annually, of all Commercial Customers, SFD and MFD in order to ensure the accuracy of the CONTRACTOR's payments to the CITY. The CONTRACTOR shall provide a copy of said audit upon request to the CITY. The CITY maintains the right to engage a third party for an independent audit of the results of the Gross Billing audit.

- A. CITY Fee Audit.** No acceptance by CITY of any payment shall be construed as an accord that the amount is the correct amount, nor shall such acceptance of payment be construed as a release of any claim CITY may have against CONTRACTOR for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recompilation by CITY. If, after an audit, such recompilation indicates an underpayment, the CONTRACTOR shall pay to the CITY the amount of the underpayment plus interest at the Wall Street Journal Prime Rate. If the underpayment is in excess of five (5) percent of the total fees due for the period of the audit, the CONTRACTOR shall reimburse CITY for all reasonable costs and expenses incurred in connection with the audit and recompilation within ten (10) Residential Service Work Days of receipt of written notice from CITY that such is the case. If, after an audit, such recompilation indicates an overpayment, CITY shall notify the CONTRACTOR in writing of the amount of the overpayment. The CONTRACTOR may offset the amounts next due following receipt of such notice by the amount specified herein.

### **9.3 ADDITIONAL FEES**

So long as the Franchise Fee is paid by the CONTRACTOR, its successors or assigns, no other general business license fee shall be imposed upon it or them by the CITY during the term of such Franchise; provided, however, such substitution of a Franchise Fee for other general business license fees shall not eliminate or otherwise modify the CONTRACTOR's duty and obligation to pay building permit fees and other fees of like nature as ad valorem taxes on the CONTRACTOR's real and personal property in the CITY.

## **ARTICLE 10: CONTRACTOR COMPENSATION AND MAXIMUM SERVICE RATES**

### **10.1 CONTRACTOR COMPENSATION**

The Maximum Service Rates set forth in Exhibit 1, as more fully defined as CONTRACTOR Compensation in this Article, shall be the maximum amount that the CONTRACTOR may charge Customers, as full, entire and complete compensation due pursuant to this Agreement for all labor, equipment, materials and supplies, fees or surcharges due to the CITY as applicable, taxes, insurance, bonds, letters of credit, overhead, disposal, transfer, processing, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. The CONTRACTOR shall impose no other charges for services provided under this Agreement to Customers unless approved in advance in writing by CITY.

### **10.2 MAXIMUM SERVICE RATES**

Maximum Service Rates shall consist of some combination of the following elements: a base service rate element, a franchise fee element and such other elements as may be added by the CITY during the Term of this Agreement to reflect new fees or charges imposed by CITY.

### 10.3 INITIAL SERVICE RATES

The Service Rates the CONTRACTOR may charge Customers through the Rate Year ending June 30, 2020 shall not exceed the Maximum Service Rates set forth as Exhibit 1.

### 10.4 SCHEDULE OF FUTURE ADJUSTMENTS

Beginning with the Rate Year starting July 1, 2020 and ending on June 30, 2021 and for all subsequent Rate Years, the Maximum Service Rates shown in Exhibit 1 shall be adjusted as described in this Article. The CONTRACTOR shall submit rate adjustment calculations in writing directly to the CITY staff or via certified mail, on or before April 1, 2020 and each succeeding Rate Year, and shall be based on the method of adjustment described in this Article. All future adjustments will become effective July 1.

### 10.5 METHOD OF FUTURE ADJUSTMENTS

Pursuant to Article 10.4, the adjustment to the Maximum Service Rates according to the method described below and the formulas and procedures shown in Exhibit 2 subject to review of the CITY. Exhibit 2 inputs will function as a support tool to facilitate the calculation of the rate adjustment.

For rate adjustment purposes, the approved Maximum Service Rates consist of a service component and a disposal component. Each cost component may be adjusted by the change in the corresponding rate adjustment index and percentage weighting, as provided below. The initial rate adjustment index weightings may be adjusted following any audit as per Article 8.11.

- A. Calculate New Disposal Component Index.** Identify tipping fee rates for Solid Waste, Green Waste and/or Recyclable Materials. The initial tipping fee rates as provided in Exhibit 2B-Initial Disposal Index.
- B. Calculate the Percentage Change in Indices.** The increase or decrease in the service component index, Consumer Price Index for All Urban Consumers (CPI-U): U. S. city average for garbage services, will be for the twelve (12) month period ending the month of December prior to July 1 of the next Rate Year.
- C. Calculate the Permitted Percentage Rate Change.** Multiply the percentage changes for the service component and disposal component by that component's assigned percentage weighting.
- D. Calculate the Permitted Rate Change.** Multiply the weighted permitted percent change from Step Three by the existing maximum service rate for Services to determine the increase or decrease in maximum rates. Then add (subtract) the change in Service Rates to (from) the existing Maximum Service Rates to determine the new Maximum Service Rates.

The rate adjustment will be subject to an annual cap of 5.0%. However, the CONTRACTOR for any year when the CPI exceeds the 5.0% rate adjustment cap, the percentage in excess of 5.0% will be allowed to be applied to the rate adjustment for the following year if the CPI for the following year falls below the 5.0% maximum and the total adjustment does not exceed the 5.0%.

## **10.6 EXTRAORDINARY RATE ADJUSTMENTS**

The CONTRACTOR may petition the CITY in writing at times other than that allowed under 10.4 (Annual Rate Adjustment) for an adjustment in the maximum rates due to (i) extraordinary circumstances beyond the CONTRACTOR's reasonable control, or (ii) due to new programs and services requested by CITY as provided herein. The CONTRACTOR shall provide documentation and analysis to the satisfaction of CITY of the reasons for such adjustment. Petitions regarding extraordinary circumstances beyond the CONTRACTOR's control shall satisfy all of the following conditions: (i) materially alters CONTRACTOR's operations or overall costs; (ii) could not reasonably have been foreseen by a prudent operator; and (iii) by all reasonable expectations will continue for a period of at least six (6) months. Such changes shall not include changes in the market value of Recyclables or inaccurate estimates by the CONTRACTOR of its cost of operations.

The CONTRACTOR's request shall contain substantial proof and justification to support the need for the adjustment. For each request brought pursuant to this section CONTRACTOR shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form reasonably acceptable to the CITY with support for assumptions made by the CONTRACTOR in preparing the estimate. The CONTRACTOR shall also submit a schedule showing how its total costs and total revenues have changed over the past two years for the services provided under this Agreement.

The CITY may request from the CONTRACTOR such further information as reasonably necessary to fully evaluate the request and make its determination. CITY may request a copy of the CONTRACTOR's annual financial statements in connection with the CITY's review of the CONTRACTOR's rate adjustment request. CITY shall review the CONTRACTOR's request and, in Board's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. The Board may consider increases or decreases in the CONTRACTOR's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

The CITY and the CONTRACTOR may agree to make changes in the service levels under this Agreement sufficient to avoid the need for a rate adjustment. Extraordinary rate adjustments shall only be effective after approval by the Board and may not be applied retroactively.

## **ARTICLE 11: INDEMNIFICATION, INSURANCE AND PERFORMANCE BOND**

### **11.1 INDEMNIFICATION OF THE CITY**

- A. GENERAL.** The CONTRACTOR shall defend, with counsel reasonably acceptable to the CITY, indemnify and hold harmless, to the fullest extent allowed by law, CITY, its officers, officials, employees, volunteers, agents and assignees (collectively, "Indemnitees"), from and against any and all causes of action, claims, costs (including but not limited to reasonable attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or enforcing this indemnity which fees and costs shall be reasonable if incurred by the CITY and reimbursed by the CONTRACTOR), loss,

damages (including but not limited to special and consequential damages), liability, penalties (including attorneys' fees for the adverse party), forfeitures, demands, proceedings or suits, in law or in equity, of every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising out of or in any way connected with the performance of this Agreement by the CITY, its agents, directors or employees, or by the CONTRACTOR, its agents, directors or employees, whether such claims, liens, demands, damages, losses or expenses are based upon a contract or upon a claim for personal injury, death or property damage or upon any other legal or equitable theory whatsoever to include without limitation, claims arising or resulting from or made by third parties alleging: (i) the negligence or willful misconduct of the CONTRACTOR, its agents, employees and/or Subcontractors, in exercising the privileges granted to it by this Agreement; (ii) the failure of the CONTRACTOR, its agents, employees and/or Subcontractors in the performance of this Agreement to comply in all respects with the provisions and requirements of this Agreement, Applicable Laws, ordinances and regulations, and/or applicable permits and licenses; (iii) the acts of the CONTRACTOR, its agents, employees and/or Subcontractors in performing services under this Agreement for which strict liability is imposed by law; and, (iv) claims that arise out of or result from the performance of this Agreement by the CITY, its agents, directors or employees or CONTRACTOR, its agents, directors or employees, whether such claims, liens, demands, damages or losses or expenses are based upon a contract or upon a claim for personal injury, death or property damage or upon any other legal or equitable theory, whatsoever. Notwithstanding herein to the contrary, the CONTRACTOR shall not be required to indemnify, defend or hold harmless the CITY from loss or liability to the extent such loss arises from the negligence, breach or willful misconduct of the CITY, its agents, directors or employees, at such time that such negligence, breach or willful misconduct has been finally determined by a court of competent jurisdiction. The CONTRACTOR shall provide the CITY with a defense until such determination has been made (i.e., until a court of competent jurisdiction has determined that the loss or liability arises from the negligence, breach or willful misconduct of the CITY, the CONTRACTOR shall provide a defense as to such loss or liability).

- B. Exempt Waste.** The CONTRACTOR acknowledges that it is responsible for compliance during the entire Term of this Agreement with all Applicable Laws. The CONTRACTOR shall not store, transport, use, or Dispose of any Exempt Waste except in strict compliance with all Applicable Laws.

In the event that the CONTRACTOR negligently or willfully mishandles Exempt Waste in the course of carrying out its activities under this Agreement, the CONTRACTOR shall at its sole expense promptly take all investigatory and/or remedial action reasonably required for the remediation of such environmental contamination. Prior to undertaking any investigatory or remedial action, however, the CONTRACTOR shall first obtain the Contract Administrator's approval of any proposed investigatory or remedial action. Should CONTRACTOR fail at any time to promptly take such action, the CITY may undertake such action at the CONTRACTOR's sole cost and expense, and the



CONTRACTOR shall reimburse the CITY for all such expenses within thirty (30) calendar days of being billed for those expenses, and any amount not paid within that thirty (30) calendar day period shall thereafter be deemed delinquent and subject to the delinquent fee payment provision of this Agreement. These obligations are in addition to any defense and indemnity obligations that the CONTRACTOR may have under this Agreement. The provisions of this Article shall survive the termination or expiration of this Agreement.

Notwithstanding the foregoing, the CONTRACTOR's duties under this subsection shall not extend to any claims arising from the Disposal of Solid Waste at the Approved Disposal Facility, including, but not limited to, claims arising under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) unless such claim is a direct result of the CONTRACTOR's negligence or willful misconduct or CONTRACTOR owns or operates the Approved Disposal Facility.

- C. Environmental Indemnity.** The CONTRACTOR shall defend, indemnify, and hold the CITY harmless against and from any and all claims, suits, losses, penalties, damages, and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, attributable to the negligence or willful misconduct of the CONTRACTOR in handling Exempt Waste.

This provision, Article 11.1 A – C, will survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by the CITY or Indemnity from third parties.

## **11.2 EVALUATION OF LIABILITY**

The CONTRACTOR's obligation to defend, hold harmless, and indemnify under Article 11 shall not be excused because of the CONTRACTOR's inability to evaluate an Indemnitee's liability or because the CONTRACTOR evaluates such liability and determines that the Indemnitee is not liable to the claimant. Within twenty (20) days of receiving written notice from the CITY of a claim for which the CITY is entitled to indemnity, the CONTRACTOR shall confirm to the CITY in writing that the CONTRACTOR will provide a defense to the claim and shall take appropriate actions to provide such defense.

## **11.3 HAZARDOUS SUBSTANCES INDEMNIFICATION**

The CONTRACTOR shall indemnify, defend with counsel acceptable to the CITY, and hold harmless the CITY, its officers, officials, employees, agents, assigns and any successor or successors to the CITY's interest from and against all claims, damages (including but not limited to special, consequential and natural resources damages) injuries, hazardous materials response, remediation and removal costs, losses, demands, liens, liabilities, causes of action, suits (including citizen's suits), legal or administrative proceedings, interest, fines, charges, penalties (including attorneys' fees for the adverse party), and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against the CITY or its officers, officials, employees, agents, assigns, or contractors arising or resulting from any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan

(regardless of whether undertaken due to governmental action) concerning: (i) any Hazardous Substance or Hazardous Wastes at any facility owned or operated by the CONTRACTOR or an Affiliate of the CONTRACTOR where CONTRACTOR transports, stores, or causes to be disposed Solid Waste pursuant to this Agreement; (ii) CONTRACTOR's discharge of a pollutant in violation of federal Clean Water Act; (iii) CONTRACTOR's violation of any State or federal air quality rule, law or regulation; (iv) CONTRACTOR's violation of any other State or federal environmental law, including the Resource Conservation and Recovery Act or its State law corollary; or (v) CONTRACTOR's discharge of any Hazardous Substance or Hazardous Waste that causes injury to Person(s) or property, in each of clauses (ii) through (v), during the Term of this Agreement and subject to Article 11. The foregoing indemnity is intended to operate as an agreement to indemnify, defend, insure, protect and hold CITY harmless from liability, pursuant to [Section 107\(e\) of CERCLA, 42 U.S.C. Section 9607\(e\)](#) and other applicable State and federal Environmental Laws.

The foregoing obligations shall not apply with respect to: (1) any Hazardous Waste or Hazardous Substance generated by the City or its agents and delivered by the City or its agents, or (2) the disposal or release of Hazardous Substances or Hazardous Waste, which disposal or release has resulted from the negligence or willful misconduct of the City or its agents.

#### **11.4 SEPARATE COUNSEL**

The CITY may elect to have and consult separate legal counsel from the CONTRACTOR at any time during the pendency of any claim at its sole discretion. the CITY shall be responsible for paying its separate counsel unless: (i) the CITY reasonably determines and notifies CONTRACTOR that separate counsel is required to represent the CITY during the resolution of any claim; or (ii) a court of competent jurisdiction rules that the CONTRACTOR has refused to satisfy its obligations under this Article 11. Notwithstanding the preceding sentence or the first sentence of Article 11.1, with respect to a particular claim, if the CONTRACTOR confirms to the CITY in writing CONTRACTOR's obligation to indemnify and defend the CITY, without reserving a right to later seek reimbursement from the CITY with respect to such claim, the CITY shall not object to the counsel representing it being the same counsel that represents CONTRACTOR in the defense of such claim and shall, if permitted by law, provide such written conflict-of-interest waiver as may be required for such joint representation. If the CONTRACTOR provides the aforementioned confirmation, but the CITY declines to consent to such joint representation, the CITY may retain its own counsel at its own expense, the CITY shall have no right of defense or reimbursement of defense costs with respect to such claim (but the CITY shall still be entitled to indemnity), the CITY shall reasonably cooperate with CONTRACTOR in the defense and settlement of such claim. If the CONTRACTOR does not provide the aforementioned confirmation, or if the CONTRACTOR provides such confirmation and the CITY is prohibited by law from providing such waiver, then the CONTRACTOR shall reimburse the CITY for the reasonable attorneys' fees and costs of the CITY's separate counsel with respect to such claim.

#### **11.5 CONSIDERATION**

It is specifically understood and agreed that the consideration inuring to the CONTRACTOR for the execution of this Agreement consists of the promises, payments, covenants, rights and responsibilities contained in this Agreement.

## **11.6 OBLIGATION**

The execution of this Agreement by the CONTRACTOR shall obligate the CONTRACTOR to comply with the foregoing indemnification provisions; however, the collateral obligation of providing insurance must also be fully complied with as set forth in Article 11.11 below.

## **11.7 SUBCONTRACTORS**

The CONTRACTOR shall require all Subcontractors performing Collection Services under the terms of this Agreement to enter into an agreement containing the provisions set forth in this Article 11 in their entirety and Subcontractor shall fully indemnify the CITY in accordance with this Agreement. Such agreement, however, will not relieve the CONTRACTOR of its obligations under this Article 11, unless the CITY expressly agrees in writing to so relieve the CONTRACTOR.

## **11.8 EXCEPTION**

Notwithstanding any other provision of this Article 11, the CONTRACTOR's obligation to indemnify, hold harmless and defend under this Article 11 does not extend to any loss, liability, penalty, damage, cause of action, suit, forfeiture, claim, demand, proceeding, injury, cost, lien, interest, fine, charge or expense (i) as to which the CONTRACTOR is precluded by law from indemnifying the Indemnitee, (ii) which arose or resulted from the sole negligence or willful misconduct of any Indemnitee; (iii) pertaining to the process by which the CONTRACTOR was selected, the exclusive franchise hereunder was granted, or this Agreement was entered into or approved by the CITY, or the CITY's authority to do any of the same.

## **11.9 DAMAGE BY CONTRACTOR**

If the CONTRACTOR's employees or Subcontractors cause any injury, damage or loss to the CITY property, including but not limited to the CITY streets or curbs, other than normal wear and tear from routine operations and as set forth in Article 5, the CONTRACTOR shall reimburse the CITY for the CITY's cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of the CITY to be indemnified by the CONTRACTOR for any such injury, damage or loss. With the prior written approval of the CITY, the CONTRACTOR may repair the damage at the CONTRACTOR's sole cost and expense.

## **11.10 SURVIVAL**

The CONTRACTOR's indemnity obligations shall survive the expiration or termination of this Agreement and continue until such obligations have been fully satisfied by the resolution of all claims for which indemnity obligations are owed to the CITY.

## **11.11 INSURANCE**

- A. Commercial General Liability.** The CONTRACTOR shall, at its sole cost and expense, procure, maintain and keep in full force and effect during the life of this Agreement commercial general liability (CGL), and if necessary, commercial umbrella liability insurance in an amount not less than Thirty One Million Dollars (\$31,000,000) for each

occurrence and general aggregate and Products/Completed Operations aggregate limits of liability coverage of not less than Thirty Two Million Dollars (\$32,000,000).

CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). with

CITY shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 07/04 and CG 20 37 07/04 or a substitute providing equivalent coverage, and under the commercial umbrella, if any.

This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to CITY. There shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under a contract.

CONTRACTOR waives all rights against CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to the first paragraph 1-1 of this agreement section 11.11 (A). Insurer shall endorse CGL policy as required to waive subrogation against CITY.

Furthermore, the commercial general liability policy will contain a separation of insureds provision specifying that the policy will apply separately to each insured against whom claim is made or suit is brought.

- B. Commercial Automobile Liability.** The CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement, automobile liability insurance and, if necessary, commercial umbrella liability insurance for owned, leased, hired or borrowed automobiles in an amount not less than Thirty One Million Dollars (\$31,000,000) combined single limit bodily injury and property damage for each accident.

Coverage as required in the first paragraph of section 11.11 (B) 1-2 above shall be written on ISO form CA 00 01, CA 00 05, CA 00 25, or a substitute form providing equivalent liability coverage.

Pollution liability coverage at least as broad as that provided under the ISO pollution liability—broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached.

CONTRACTOR waives all rights against CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the automobile liability or commercial umbrella liability insurance obtained by Tenant pursuant to this agreement.

- C. Workers' Compensation and Employer's Liability.** The CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement workers' compensation coverage in an amount not less than the State statutory limits and employers' liability insurance in an amount not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident or One Million Dollars (\$1,000,000) each employee for bodily injury by disease. CONTRACTOR waives all rights against CITY and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the workers compensation and employer's liability or commercial umbrella liability insurance obtained by Tenant pursuant to this agreement. CONTRACTOR shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver.
- D. Pollution and Remediation Legal Liability for all sites Owned or Operated by Contractor Claims Made.** The CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement Pollution and Remediation Legal Liability insurance applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; transit exposures, off-site cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claim; arising out of pollution condition at on or under the covered site. Coverage shall be maintained in an amount not less than Fifteen Million (\$15,000,000).

Coverage as required above shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants.

Said Pollution and Remediation Legal Liability insurance shall be on a claims-made form and any retroactive date shall be prior to the date CONTRACTOR first began providing services in the CITY as the exclusive franchisee for solid waste collection services. Said Pollution and Remediation Legal Liability insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of this Agreement.

If pollution liability insurance coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of this Agreement.

The CONTRACTOR shall procure, maintain and keep in full force and effect during the life of this Agreement any other insurance required by law. The limits of insurance herein shall not limit the liability of the CONTRACTOR.

The Pollution Legal Liability policy required in 11.11 D above shall include coverage for contracting operations for the collection, transportation, temporary storage and disposal of the waste. Coverage to include unloading and loading of the waste, and all forms of transportation. The coverage is to apply to pollution conditions arising out of the services under this Agreement for liability arising for bodily injury, property damage including natural resource damage liability and off-site cleanup costs.

- E. Policy.** The policy or policies shall be issued by an insurer licensed to do business in the State. Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-casualty/United States should be A- (Secure Best's Rating) and VIII (Financial Size Category).
- F. Deductibles or Self-Insured Retentions.** Any deductibles or self-insured retentions applicable to the above required insurance policies, shall be for the account of the CONTRACTOR and paid entirely by CONTRACTOR without contributions from CITY.
- G. Additional Requirements.** The type and amount of coverage, including the amount of the self-insured retentions, required hereunder may be amended in the future to limits reasonably required by the CITY (such amendment to be considered a CITY-Directed Change and handled pursuant to Article 5.5). The CONTRACTOR shall provide the CITY an endorsement to its insurance policies specifically naming the CITY, its officers, officials, agents, independent contractors, employees and volunteers as additional insureds under the commercial general liability and automobile liability policies, providing coverage for claims that arise out of the work or operations performed by or on behalf of the CONTRACTOR or that in any way concerns this Collection Service Agreement and include coverage for the additional insureds for both ongoing and completed operations so long as the liability of an additional insured arises out of the work of the named insured, or so long as an additional insured's liability arises out of the named insured's performance of this Agreement. The CONTRACTOR shall not utilize an omnibus endorsement, but shall provide an endorsement that specifically names the CITY, its officers, officials, agents, independent contractors, employees and volunteers as additional insureds under the policy. The additional insured endorsement shall not contain any provisions not included in the additional insured forms referenced in this agreement which limit or restrict coverage for the additional insureds beyond the extent set forth in this Agreement. Upon commencement of this Agreement, the CITY shall receive, at a minimum, a certificate of insurance along with policy forms endorsements confirming coverage required under this agreement.

Upon request from CITY, the CONTRACTOR shall provide CITY a certificate of insurance (including any endorsements required by this agreement) within ten (10) Business days following receipt of a written request from the CITY for the same. The required insurance certificate and required Ppolicy endorsements shall be filed by the

CONTRACTOR with the CITY Clerk prior to the commencement of the CONTRACTOR's operations under this Agreement, which certificate and endorsements shall reflect the coverage as set forth herein. Following the binding of any policy of insurance, the CONTRACTOR shall deliver a new certificate with policy endorsements from the insurance company to the CITY Clerk. The general liability, Pollution and Remediation Legal Liability, excess liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **Primary Insurance.** For any claims related to this Agreement the CONTRACTOR's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, agents, independent contractors, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
  2. **Notification of Cancellation.** The CONTRACTOR is required to notify the CITY by certified mail, return receipt requested, of the cancellation, non-renewal or material change of any insurance coverage or policy immediately upon receiving notice of cancellation, non-renewal or material change. Where such notice is not provided by the insurer, CONTRACTOR shall provide the notice directly.
- H. **Subcontractors.** Any Subcontractor(s), independent contractor(s) or any type of agent(s) performing or hired to perform any term or condition of this Agreement on behalf of the CONTRACTOR, or as may be allowed by this Agreement, hereinafter referred to as "SECONDARY PARTIES," shall comply with required insurance as determined by Contractor to be adequate and applicable to the work to be performed by the SECONDARY PARTIES. Furthermore, the CONTRACTOR shall be responsible for the SECONDARY PARTIES' acts, omissions and satisfactory performance of the terms and conditions of this Agreement. ~~All Subcontractors, independent contractors and agents to the CONTRACTOR are disclosed on Exhibit 5, attached hereto.~~
- I. **Occurrence-based coverage and Thirty-Day Notice.** Except for the pollution liability policy, which is written on a claims-made basis, each insurance policy required by this clause shall be occurrence-based or an alternate form as approved by the CITY and endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been received by the CITY, except ten (10) days' notice will apply to cancellation for non-payment of premium. Where such notice is not provided by the insurer, CONTRACTOR shall provide the notice directly.
- J. **Proof of Insurance.** Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the CITY.

**Address to be added upon execution of Agreement**

- K. **Modification of Insurance Requirements.** The insurance requirements provided in this Agreement may be modified or waived by the CITY, in writing, upon the request of the

CONTRACTOR if the CITY determines such modification or waiver is in the best interest of the CITY considering all relevant factors, including exposure to the CITY.

- L. Rights of Subrogation.** All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against the CITY with the express intention of the Parties being that the required insurance coverage protects both Parties as the primary coverage for any and all losses covered by the above-described insurance. The CONTRACTOR shall ensure that any companies issuing insurance to cover the requirements contained in this Agreement agree that they shall have no recourse against the CITY for payment or assessments in any form on any policy of insurance. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event of an Occurrence, Claim or Suit' as it appears in any policy of insurance in which the CITY is named as an additional insured shall not apply to the CITY.
- M. Failure to Obtain Insurance.** The failure of the CONTRACTOR to obtain and maintain any required insurance shall not relieve CONTRACTOR of any liability under this Agreement (and the CONTRACTOR may be answerable to the CITY for damages or any other remedy on account of such breach) nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the CONTRACTOR concerning indemnification.
- N. No Limitation of Liability.** By requiring insurance herein, CITY does not represent that coverage and limits will necessarily be adequate to protect CONTRACTOR, and such coverage and limits shall not be deemed as a limitation on CONTRACTOR'S liability under the indemnities granted to CITY in this contract.

#### **11.12 PERFORMANCE BOND**

Unless waived by the CITY in writing, the CONTRACTOR shall furnish to the CITY, and keep current, a performance bond in a form with language that is acceptable to the CITY, for the faithful performance of this Agreement and all obligations arising hereunder in an amount of Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00). In the event the performance bond is waived by the CITY and the CONTRACTOR takes any action, or allows any action to be taken, which falls under the provisions of Article 13.10 entitled "ASSIGNMENT," waiver of the performance bond as set forth in Article 11.12 herein, is automatically and immediately rescinded and the CONTRACTOR shall have ten (10) calendar days to obtain the performance bond required herein and provide proof of such performance bond to the CITY.

- A. Requirements.** The performance bond shall be executed by a surety company that is: acceptable to the CITY; an admitted surety company licensed to do business in the State; has an "A:VII" or better rating by A. M. Best or Standard and Poor's; and included on the list of surety companies approved by the Treasurer of the United States.
- B. Letter of Credit.** As an alternative to the performance bond discussed in Article 11.12, with the CITY's approval, the CONTRACTOR may deposit with the CITY an irrevocable letter of credit in an amount as set forth in Article 11.12. If allowed, the letter of credit



must be issued by an FDIC insured banking institution chartered to do business in the State, in the CITY's name, and be callable at the discretion of the CITY.

## ARTICLE 12: DEFAULT AND REMEDIES

### 12.1 EVENTS OF DEFAULT

All provisions of this Agreement are considered material. Each of the following shall constitute an event of default.

- A. **Fraud or Deceit.** The CONTRACTOR practices, or attempts to practice, any fraud or deceit upon the CITY.
- B. **Insolvency or Bankruptcy.** The CONTRACTOR becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of the CONTRACTOR in a bankruptcy proceeding.
- C. **Failure to Provide and Maintain Bonds/Letter of Credit and Coverage.** The CONTRACTOR fails to provide or maintain the performance bond or letter of credit, if required by this Agreement, or if the CONTRACTOR fails to provide or maintain in full force and affect the workers' compensation, liability, or indemnification coverage as required by this Agreement.
- D. **Violations of Regulation.** The CONTRACTOR violates any orders of any regulatory body having authority over CONTRACTOR relative to this Agreement, provided that the CONTRACTOR may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred unless and until the regulatory body or court determines CONTRACTOR violated such order or filing.
- E. **Violations of Applicable Law.** The CONTRACTOR violates Applicable Law relative to this Agreement.
- F. **Failure to Perform Direct Services.** The CONTRACTOR completely ceases to provide Collection, transportation, or Processing services as required under this Agreement for a period of two (2) consecutive calendar days or more, for any reason within the control of the CONTRACTOR.
- G. **Failure to Perform Customer Service as Required.** The CONTRACTOR fails to perform Customer Service as required in Section 8.8 and Section 8.9 of this Agreement.
- H. **Failure to Pay or Report.** The CONTRACTOR fails to make any payments to the CITY as required under this Agreement including payment of CITY fees, surcharges or Liquidated Damages or refuses to provide the CITY with required information, reports, and/or records in a timely manner as provided for in this Agreement.
- I. **Acts or Omissions.** Any other act or omission by the CONTRACTOR which violates the terms, conditions, or requirements of this Agreement, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the CONTRACTOR

cannot reasonably correct or remedy the breach within the time set forth in such notice, if the CONTRACTOR should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

- J. False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the CITY by the CONTRACTOR in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement; and, any CONTRACTOR- provided report containing a misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by this Agreement, excepting non-numerical typographical and grammatical errors.
- K. Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of the CONTRACTOR's operating equipment, including without limits its equipment, maintenance or office facilities, Approved Facility, or any part thereof.
- L. Suspension or Termination of Service.** There is any complete termination or suspension of the transaction of business by the CONTRACTOR related to this Agreement, including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than ~~two-five~~ (52) calendar days.
- M. Criminal Activity.** The CONTRACTOR, its officers, managers, or employees are found guilty of criminal activity.
- N. Assignment without Approval.** The CONTRACTOR transfers or assigns this Agreement without the expressed written approval of the CITY unless the assignment is permitted without approval of the CITY pursuant to Article 13.10 of this Agreement.
- O. Failure to Provide Proposal or Implement Change in Service.** The CONTRACTOR fails to provide a proposal for new services or changes to services or fails to implement a change in service as requested by the CITY as specified in Article 5.5.
- P. Failure to Perform Any Obligation.** The CONTRACTOR fails to perform any obligation established under this Agreement.

## 12.2 RIGHT TO TERMINATE UPON EVENT OF DEFAULT

The CITY may terminate this Agreement immediately upon written notice to the CONTRACTOR in the event the CONTRACTOR defaults under Article 12.1.C entitled, "Failure to Provide and Maintain Bonds/Letters of Credit and Coverage."

The CONTRACTOR shall be given ten (10) Business Days from written notification by the CITY to cure any default which, in the CITY's sole opinion, creates a potential public health and safety threat.

The CONTRACTOR shall be given ten (10) Business Days from written notification by the CITY to cure any default arising under subsections E, F, G, J, K, and L in Article 12.1 and thirty (30) calendar days from written notification by the CITY to cure any other default. Should the CONTRACTOR commit the same material breach of this Agreement within a twenty-four-month period, the CONTRACTOR shall be given five (5) Business Days to cure such breach and the CONTRACTOR shall meet and confer with the CITY, in good faith, to establish a corrective action plan necessary to resolve the performance failure. The corrective action plan may include escalating liquidated damages established by the CITY for failure to

implement the required corrective action plan. Further, if there are additional breaches of such performance obligation within twenty-four months of the event triggering this provision, and CONTRACTOR has failed to diligently implement the corrective action plan, then CITY may terminate this Agreement without providing CONTRACTOR an opportunity to cure.

Failure to allege breach/default shall not constitute waiver by the CITY.

### **12.3 CITY'S REMEDIES IN THE EVENT OF DEFAULT**

Upon the CONTRACTOR's default, the CITY has the following remedies in the event of the CONTRACTOR default:

- A. Waiver of Default.** The CITY may waive any event of default or may waive CONTRACTOR's requirement to cure a default event if the CITY determines that such waiver would be in the best interest of the CITY. The CITY's waiver of an event of default is not a waiver of future events of default that may have the same or similar conditions.
- B. Suspension of the CONTRACTOR's Obligation.** The CITY may suspend CONTRACTOR's performance of its obligations if the CONTRACTOR fails to cure default in the time frame specified in Article 12.2 until such time the CONTRACTOR can provide assurance of performance in accordance with the terms of this Agreement.
- C. Liquidated Damages.** The CITY may assess Liquidated Damages for the CONTRACTOR's failure to meet specific performance standards pursuant to Article 12.6.
- D. Termination.** In the event that the CONTRACTOR should default and fail to cure as provided in Section 12.2, then the CITY may, at their option, terminate this Agreement and/or hold a hearing at its governing body meeting to determine whether this Agreement should be terminated. In the event the CITY decides to terminate this Agreement, the CITY shall serve twenty (20) calendar days written notice of its intention to terminate upon CONTRACTOR. In the event the CITY exercises its right to terminate this Agreement, the CITY may, at its option, upon such termination, either directly undertake performance of the services or arrange with other Persons to perform the services with or without a written agreement. This right of termination is in addition to any other rights of the CITY upon a failure of the CONTRACTOR to perform its obligations under this Agreement.

CONTRACTOR shall not be entitled to any further revenues from Collection operations authorized hereunder from and after the date of termination.

- E. Other Available Remedies.** The CITY's election of one (1) or more of the remedies described herein shall not limit the CITY from any and all other remedies at law and in equity including injunctive relief, etc.

### **12.4 POSSESSION OF RECORDS UPON TERMINATION**

In the event of termination for an event of default, the CONTRACTOR shall furnish the Contract Administrator with immediate temporary access for a period of time to be determined by the CITY, to all of its business records, including without limitation, proprietary CONTRACTOR computer systems reports, related to its Customers, Collection routes, and billing of accounts for Collection services.

**12.5 CITY’S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

The CITY’s rights to terminate this Agreement under Article 12.3, and to take possession of the CONTRACTOR’s records under Article 12.4 are not exclusive, and the CITY’s termination of this Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies, including but not limited to termination, which the CITY may have.

By virtue of the nature of this Agreement, the urgency of timely, continuous, and high-quality service; the lead time required to effect alternative service; and, the rights granted by the CITY to the CONTRACTOR, the remedy of damages for a breach hereof by the CONTRACTOR is inadequate and the CITY shall be entitled to injunctive relief (including but not limited to specific performance).

**12.6 PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES**

**A. General.** The CONTRACTOR acknowledges and agrees that one of the CITY’s primary goals in entering into this Agreement is to ensure that the provided Collection Services are of the highest quality; that Service Recipient satisfaction remains at the highest level; that maximum diversion levels are achieved in consideration of economic benefit; that fees for service remain competitive; and, that materials Collected are put to the highest and best use to the extent feasible.

**B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent and reliable Collection Service is of utmost importance to the CITY and that the CITY has considered and relied on CONTRACTOR’s representations as to its quality of service commitment in entering into this Agreement with it. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if the CONTRACTOR fails to achieve the performance standards, or fails to submit required documents in a timely manner, the CITY and the CITY’s residents and businesses will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages. Therefore, without prejudice to the CITY’s right to treat such non-performance as an event of default under Article 12, the Parties agree that the liquidated damages amount defined below represent reasonable estimates of the amount of such damages considering all of the circumstances existing on the effective date of this Agreement, including the relationship of the sums to the range of harm to the CITY, Customers and the community as a whole 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 this Agreement was made.

CITY Initial Here \_\_\_\_\_ CONTRACTOR Initial Here \_\_\_\_\_

**C. Procedure for Assessing Liquidated Damages.**

1. The CITY may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representatives, investigation of Customer complaints or self-reporting by the CONTRACTOR.
  
2. Prior to assessing liquidated damages, and within thirty (30) days of becoming aware of such violation, the CITY shall give CONTRACTOR notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. The CONTRACTOR may review, and make copies at its own expense of all information in the possession of the CITY relating to incident(s)/non-performance. The CONTRACTOR shall not be liable to pay liquidated damages with respect to any violation or incident of non-performance that occurs more than thirty (30) days before notice is given to the CONTRACTOR except in those instances where the CITY determines to its satisfaction that the CONTRACTOR knowingly perpetrated the violation or incident of non-performance. The CONTRACTOR may, within ten (10) working days after receiving notice, request a meeting with the CITY to present evidence regarding the accuracy of the facts related to the incident. If a meeting is requested, it shall be held by the Contract Administrator or his/her designee. The CONTRACTOR may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The Contract Administrator or designee will provide CONTRACTOR with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the Contract Administrator or designee may be appealed to the CITY. The decision of the CITY shall be final and the CONTRACTOR shall have been deemed to have exhausted its administrative remedies and can thereafter challenge such ruling in court. The CONTRACTOR shall not be liable to pay liquidated damages with respect to any violation or incident of substandard performance as described in Article 12.7 entitled "Excuse from Performance" herein or occurring after termination of this Agreement or while the CITY (or any third party authorized by the CITY) is performing interim Collection Services except for items 3., 4., 5., 10., 12., or 17., in the tables below occurring after termination of this Agreement.
  
3. The CONTRACTOR shall pay any Liquidated Damages assessed by the CITY within ten (10) Business Days of the date the Liquidated Damages are assessed. If they are not paid within the ten (10) Business Day period, the CITY may proceed against the performance bond required by this Agreement, order the termination of the rights granted by this Agreement, or all of the above.

D. The CONTRACTOR agrees to pay (as Liquidated Damages and not as a penalty) the following amounts:

<b>LIQUIDATED DAMAGES</b>	
<b>Item</b>	<b>Amount</b>

LIQUIDATED DAMAGES		
Item		Amount
1.	Failure or neglect to resolve a Customer complaint relating to missed Collection within the time set forth in Article 8.8, or failure to initially respond to any other type of Customer complaint within one (1) Work Day.	\$300.00 per incident per Service Recipient.
2.	Failure to clean up spillage or litter caused by the CONTRACTOR within the time set forth in Article 7.5.	\$300.00 per incident per location.
3.	Failure to repair damage to Customer property caused by the CONTRACTOR or its personnel.	\$500.00 per incident per location in addition to the reasonable cost of repair if not paid by the CONTRACTOR prior to the assessment of this liquidated damage.
4.	Failure to repair, or reimburse the CITY for, damage to the CITY property, other than normal wear and tear from routine operations, caused by the CONTRACTOR or its personnel, as provided in Article 11.9.	\$500.00 per incident in addition to the reasonable cost of repair if not paid by the CONTRACTOR prior to the assessment of this liquidated damage.
5.	Failure to maintain or timely submit to the CITY all quarterly and annual reports by the deadlines set forth in Article 8.9.	\$250.00 per incident per day for each day after the report(s) are due.
6.	Failure or neglect to complete at least ninety percent (90%) of a route within the CITY (i.e., Collect at least 90% of properly set out Carts or Bins on the route) on the regular scheduled Collection Service day unless addressed in Article 12.7, Excuse for Performance, herein.	\$1,000.00 for each route not completed.
7.	Failure to notify Customers of changes in route days as required by Article 7.4.	\$50.00 per Customer per day to a maximum of \$1,000.00 per occurrence.
8.	Failure to repair or replace damaged Carts or Bins within the time required by Article 7.10.	\$100.00 per incident per day to a maximum of \$500.00 per occurrence.
9.	Failure to deliver or exchange Carts or Bins within the time required by Article 7.10.C.	\$100.00 per incident per day to a maximum of \$500.00 per occurrence.

LIQUIDATED DAMAGES		
Item		Amount
10.	Failure to maintain or timely submit to the CITY or CITY's designated agent all documents and reports required under the provisions of this Agreement.	\$250.00 per incident per day.
11.	Failure to display CONTRACTOR's name and customer service phone number on Collection vehicles for a period exceeding thirty (30) calendar days.	\$100.00 per incident per day.
12.	Commingling Solid Waste with Recyclable Materials in Collection Vehicles.	\$1,000.00 per incident.
13.	Disposal of Recyclable Materials (or Green Waste/Organic Materials if proposed and selected through this process) in the Disposal Facility except as provided in this Agreement.	\$1,000.00 per load.
14.	Failure to deliver any Collected materials to the CITY approved Disposal Facility, Materials Recovery Facility, Transfer Station, or Organic Materials Processing Facility, as appropriate, except as otherwise expressly provided in this Agreement.	\$5,000.00 first failure \$25,000.00 each subsequent failure.
15.	Ceasing a program or part of a program for longer than thirty (30) days without written permission of the Contract Administrator, unless otherwise permitted under this Agreement.	\$1,000 per day beginning with the 31 <sup>st</sup> day.
16.	Failure to report non-CITY materials separately in the MRF diversion figures.	\$5,000 per incident

## 12.7 EXCUSE FROM PERFORMANCE

The Parties shall be excused from performing their respective obligations hereunder and from any obligation to pay Liquidated Damages to the extent and for the period of time they are prevented from so performing by reason of floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder. In the case of labor unrest or job action directed at a third party over whom CONTRACTOR has no control, the inability of the CONTRACTOR to provide services in accordance with this Agreement due to the unwillingness or failure of the third party to: (i) provide reasonable assurance of the safety of the CONTRACTOR's employees while providing such services; or, (ii) make reasonable accommodations with respect to Container placement and point of Delivery, time of Collection, or other operating circumstances to minimize any confrontation with pickets or the number of Persons necessary to make Collections shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on the CONTRACTOR's cooperation in performing Collection services at different times and in different

locations. Further, in the event of labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the CONTRACTOR's employees or directed at the CONTRACTOR, or a subsidiary, the CONTRACTOR shall be excused from performance for the first five (5) days of such labor unrest.

The Party claiming excuse from performance shall, within two (2) calendar 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 Article.

If either Party validly exercises its rights under this Article, the Parties hereby waive any claim against each other for any damages sustained thereby.

The partial or complete interruption or discontinuance of the CONTRACTOR's services caused by one (1) or more of the events described in this Article shall not constitute a default by the CONTRACTOR under this Agreement. Notwithstanding the foregoing, however, if the CONTRACTOR is excused from performing all of its obligations hereunder for any of the causes listed in this Article for a period of thirty (30) calendar days or more, the CITY shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) Business Days' notice to the CONTRACTOR, in which case the provisions of Article 12.3 shall apply.

#### **12.8 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

The Parties acknowledge that it is of the utmost importance to the CITY and the health and safety of all those members of the public residing or doing business within the CITY who will be adversely affected by interrupted waste management service, that there is no material interruption in services provided under this Agreement.

If the CONTRACTOR: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (ii) appears in the reasonable judgment of the CITY to be unable to regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order entered by a Federal, State, regional or local agency for violation of an Applicable Law, and the CITY believes in good faith that the CONTRACTOR's ability to perform under this Agreement has thereby been placed in substantial jeopardy, the CITY may, at their sole option and in addition to all other remedies it may have, demand from the CONTRACTOR reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the CITY believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under this Agreement. If the 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 for purposes of Article 12.1.

### **ARTICLE 13: OTHER AGREEMENTS OF THE PARTIES**

#### **13.1 LEGAL REPRESENTATION**

It is acknowledged that each Party was, or had the opportunity to be, represented by counsel in the



preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that a contract or Agreement shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both Parties.

### **13.2 FINANCIAL INTEREST**

The CONTRACTOR warrants and represents that no elected official, officer, agent or employee of the CITY has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no CITY employee who acts in the CITY as a purchasing agent, nor any elected or appointed officer of the CITY, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the CONTRACTOR. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the CONTRACTOR.

### **13.3 CONTRACTOR NOT OFFICER, EMPLOYEE OR AGENT**

- A. CONTRACTOR IS INDEPENDENT CONTRACTOR.** It is understood and agreed, and it is the intention of the Parties hereto, that the CONTRACTOR is an independent contractor, and is not an officer, employee, or agent of the CITY for any purpose whatsoever. The CITY shall have no right to and shall not control the manner and method by which the franchise services are performed by CONTRACTOR herein, except as otherwise provided in this Agreement. The CONTRACTOR shall be entirely and solely responsible for its acts and the acts of its agents, employees, Subcontractors engaged in the performance of services hereunder. The CONTRACTOR shall have no claim under this Agreement or otherwise against the CITY for vacation pay, sick leave, retirement benefits, social security, workers' compensation, disability, or unemployment insurance benefits or other employee benefits of any kind. The Parties acknowledge that the CITY shall not withhold from the CONTRACTOR's compensation any funds for income tax, FICA, disability insurance, unemployment insurance, or similar withholding and the CONTRACTOR is solely responsible for the timely payment of all such taxes and related payments to the State and federal government for itself and its employees, agents, and Subcontractors who might render services in connection with this Agreement. The CONTRACTOR shall inform all entities or Persons who perform any services pursuant to this Agreement of the provisions of this Article.
- B. CONTRACTOR RESPONSIBILITY TO AND FOR ITS OFFICERS, AGENTS EMPLOYEES, the CONTRACTORS AND SUBCONTRACTORS.** The CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and Subcontractors, if any. Neither the CONTRACTOR nor its officers, employees, agents, contractors, or Subcontractors shall obtain any right to retirement benefits, workers' compensation benefits, or any other compensation or benefits which accrue to the CITY employees and the CONTRACTOR expressly waives any claim it may have or acquire to such compensation or benefits.

### **13.4 CONTRACTOR'S USE OF SUBCONTRACTOR**

The use of a Subcontractor to perform services under this Agreement shall not constitute delegation of the CONTRACTOR's duties provided that the CONTRACTOR has received prior written authorization from the Contract Administrator to subcontract such services and the Contract Administrator has approved a Subcontractor who will perform such services. The CONTRACTOR shall be responsible for directing the work of the CONTRACTOR's Subcontractors and any compensation due or payable to the CONTRACTOR's Subcontractor shall be the sole responsibility of the CONTRACTOR. The Contract Administrator shall have the right to require the removal of any approved Subcontractor for reasonable cause. ~~The Subcontractors listed in Exhibit 5 to this Agreement are hereby approved by the CITY.~~

### **13.5 COMPLIANCE WITH LAW**

The CONTRACTOR shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses of the United States, State, County, and the CITY and with all applicable regulations promulgated by Federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term. Nothing contained in this Agreement shall require any Party to perform any act or function contrary to law, or limit the laws with which the Party must comply.

- A. PERMITS AND LICENSES.** The CONTRACTOR shall obtain, at its own expense, all permits, licenses and approvals required by law or ordinance, and shall maintain such permits, licenses and approvals in full force and effect throughout the Term of this Agreement. The CONTRACTOR shall provide proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the Contract Administrator.
- B. NOTICE OF AMENDMENT TO CITY MUNICIPAL CODE.** The CITY shall provide written notice to the CONTRACTOR of any planned amendment of the Carson City Municipal Code of Ordinances that would substantially affect CONTRACTOR's obligations or the performance of the CONTRACTOR's services pursuant to this Agreement. Such notice shall be provided at least thirty (30) calendar days prior to the Board's approval of such an amendment.

### **13.6 GOVERNING LAW**

The law of the State shall govern the rights, obligations, duties and liabilities of the CITY and the CONTRACTOR under this Agreement and shall govern the interpretation of this Agreement.

### **13.7 LITIGATION**

In the event of any litigation arising out of this Agreement, the prevailing Party in such action shall be entitled to recover its reasonable costs and expenses including, without limitation, reasonable attorneys' fees and costs paid or incurred in good faith. The "prevailing Party," for purposes of this Agreement, shall be deemed to be that Party who obtains substantially the result sought, whether by settlement, dismissal or judgment.

### **13.8 JURISDICTION**

The Parties agree that any litigation between the CITY and the CONTRACTOR concerning or arising out of this Agreement shall be filed and maintained exclusively in the courts of Nevada. Each Party consents to service of process in any manner authorized by law.

### **13.9 BINDING ON SUCCESSORS**

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

### **13.10 ASSIGNMENT**

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

For purposes of this Article, "assignment" shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of the CONTRACTOR's local, regional, and/or corporate assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of ten (10) percent or more of the local, regional, and/or corporate assets, stock, or ownership of the CONTRACTOR to a Person (other than a transfer of shares in the CONTRACTOR by the owner of such shares to a revocable trust for the benefit of his family or to another owner of shares in the CONTRACTOR) except that no cumulative sale, exchange, or transfer of shares may exceed twenty (20) percent during the Term of this Agreement (other than a transfer of shares in the CONTRACTOR by the owner of such shares to a revocable trust for the benefit of his family or to another owner of shares in the CONTRACTOR); (iii) any reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which the CONTRACTOR or any of its shareholders is a party which results in a change of ownership or control of ten (10) percent or more of the value or voting rights in the local, regional, and/or corporate stock of the CONTRACTOR; (iv) divestiture of an Affiliate (e.g., trucking company, materials recovery facility, transfer station, etc.) used by the CONTRACTOR to fulfill its obligations under this Agreement; and, (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of local, regional, and/or corporate ownership and/or control of the CONTRACTOR. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

The CONTRACTOR acknowledges that this Agreement involves rendering a vital service to the CITY's residents and businesses, and that the CITY has selected CONTRACTOR to perform the services specified herein based on: (i) CONTRACTOR's experience, skill, and reputation for conducting its Solid Waste, Recyclables, Green Waste and C&D Debris management operations in a safe, effective, and responsible fashion, at all times in keeping with applicable waste management laws, regulations, and good waste management practices; and, (ii) CONTRACTOR's financial resources on a local, regional, and/or corporate level to maintain the required equipment and to support its indemnity obligations to the CITY under this Agreement. The CITY has relied on each of these factors, among others, in choosing the CONTRACTOR to perform the services to be rendered by the CONTRACTOR under this Agreement.

If the CONTRACTOR requests the CITY consideration of and consent to an assignment, the CITY may deny or approve such request in their complete discretion. No request by the CONTRACTOR for consent to an assignment need be considered by the CITY unless and until CONTRACTOR has met the following requirements. The CITY may, in its sole discretion, waive one (1) or more of these requirements.

- A. On the date the CONTRACTOR submits a written request for the CITY written consent of an assignment, the CONTRACTOR shall pay the CITY a transfer fee in the amount of one (1) percent of the Gross Billings for the most-recently completed Rate Year. The transfer fee shall be returned to the CONTRACTOR if the CITY denies consent.
- B. The CONTRACTOR shall undertake to pay the CITY its reasonable expenses for attorneys', consultants', accountants' fees, staff time, 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.
- C. The CONTRACTOR shall furnish the CITY with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.
- D. The CONTRACTOR shall furnish the CITY with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste, Recyclable Materials, Organic Materials and C&D Debris management experience on a scale equal to or exceeding the scale of operations conducted by the CONTRACTOR under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any citations or other censure from any Federal, State or local agency. The CONTRACTOR having jurisdiction over its waste management operations due to any significant failure to comply with State, Federal or local waste management laws and that the assignee has provided the CITY with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its operations and management practices in accordance with sound waste management practices in full compliance with all Federal, State, and local laws regulating the Collection, transportation, Processing and Disposal of Solid Waste, Recyclable Materials, Organic Materials and C&D Debris, including Hazardous Waste; and, (v) that any other information required by the CITY demonstrates that the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.
- E. The CONTRACTOR shall provide the CITY with any and all additional records or documentation which, in the CITY's sole determination, would facilitate the review of the proposed assignment.

Under no circumstances shall any proposed assignment be considered by the CITY if the CONTRACTOR is in default at any time during the period of consideration. If, in the CITY's sole determination, there is any doubt regarding the compliance of the CONTRACTOR with this Agreement, the CITY may require an audit of the CONTRACTOR's compliance and the costs of such audit shall be paid by the CONTRACTOR in advance of the performance of said audit.

### **13.11 NO THIRD-PARTY BENEFICIARIES**

This Agreement is not intended to, and will not be construed to, create any right on the part of any third party to bring an action to enforce any of its terms.

### 13.12 WAIVER

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

### 13.13 TRANSITION TO NEXT CONTRACTOR

**Requirements in Event of Transition.** In the event the CONTRACTOR is not awarded an Agreement to continue to provide Collection Services following the expiration or early termination of this Agreement, the CONTRACTOR shall cooperate fully with the CITY and any subsequent contractors to assure a smooth transition of services described in this Agreement. Unless otherwise agreed by the CITY and the CONTRACTOR, such cooperation shall consist of: (a) providing the following information to the subsequent contractor: routing information, route maps, vehicle fleet information (if the subsequent contractor buys the CONTRACTOR's vehicle fleet), a list of Service Recipients' contact information and their respective Service Levels, a complete inventory of all Carts and Bins (if the subsequent Contractor buys the CONTRACTOR's Carts and Bins), and any other information deemed necessary by the CITY; and (b) providing adequate labor and equipment to complete performance of all Collection Services required under this Agreement. The CONTRACTOR shall not be eligible for the recovery of any costs associated with these transition activities. However, if the CONTRACTOR is requested to provide additional transition services outside the scope of this Collection Service Agreement the CONTRACTOR shall be compensated for such services at an amount to be agreed upon between the CITY and the CONTRACTOR prior to the provision of those services.

### 13.14 CONTRACTOR'S RECORDS

- A. **Maintenance of Financial Records.** The CONTRACTOR shall maintain eight (8) years of any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Service Recipients for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to the CONTRACTOR pursuant to this Agreement.
- B. **Maintenance of Performance Records.** The CONTRACTOR shall maintain eight (8) years of all documents and records which demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- C. **Availability of Records.** Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at any time during regular business hours upon written request by the Contract Administrator, the CITY Attorney, CITY Auditor, CITY Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the CITY for inspection at the CITY offices when it is practical to do so. Otherwise, unless an alternative site is mutually

agreed upon, the records shall be available at the CONTRACTOR's address indicated for receipt of notices in this Agreement.

- D. Provision of Requested or Demanded Records.** Where the CITY has reason to believe that such records or documents may be lost or discarded due to the dissolution, disbandment or termination of the CONTRACTOR's business, the CITY may, by written request or demand of any of the above-named officers, require that custody of the records be given to the CITY and that the records and documents be maintained in CITY Hall. Within ten (10) Business Days after receiving the CITY's written request or demand, the CONTRACTOR shall provide the CITY all requested records and documents reasonably necessary to determine compliance with this Agreement. The CITY shall make those records and documents available to the CONTRACTOR, the CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest at CITY Hall during regular operating hours.

### **13.15 NOTICE PROCEDURES**

Except as provided herein, whenever either Party desires to give notice to the other, it must be given by written notice addressed to the Party for whom it is intended, at the place last specified as the place for giving of notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective Persons and places for giving of notice:

**As to the CITY:**

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**As to the CONTRACTOR:**

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- A.** Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice only. Facsimile transmission is acceptable notice, effective when received, however, facsimile transmissions received (i.e. printed) after 4:30 p.m. or on weekends or Holidays, will be deemed received on the next Business Day. Receipt is deemed to have taken place within three (3) Residential Service Work Days of notice mailed by U.S. Postal Service return receipt requested. The original of items that are transmitted by facsimile equipment must also be mailed as required herein.
- B.** Notice by the CITY to the CONTRACTOR of a Collection or other Service Recipient problem or complaint may be given to the CONTRACTOR orally by telephone at the CONTRACTOR's local office with confirmation sent as required above by the end of the Residential Service Work Day.

## **ARTICLE 14: MISCELLANEOUS AGREEMENTS**

### **14.1 ENTIRETY OF AGREEMENT**

This Agreement and the Exhibits attached hereto constitute the entire Agreement and understanding between the Parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the Parties hereto.

### **14.2 SEVERABILITY**

If any provision of this Agreement or the application of it to any Person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to Persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

### **14.3 RIGHT TO REQUIRE PERFORMANCE**

The failure of the CITY at any time to require performance by the CONTRACTOR of any provision hereof shall in no way affect the right of the CITY thereafter to enforce same. Nor shall waiver by the CITY of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

### **14.4 NON-DISCRIMINATION**

In the performance of all work and services under this Agreement, the CONTRACTOR shall not discriminate against any Person on the basis of such Person's race, sex, color, national origin, religion, marital status, age, disability or sexual orientation. The CONTRACTOR shall comply with all applicable local, State and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

### **14.5 ALL PRIOR AGREEMENTS SUPERSEDED**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, contracts and understandings applicable to the matters contained in this Agreement and the Parties agree that there are no commitments, agreements, contracts or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations, agreements or contracts, whether oral or written.

### **14.6 HEADINGS**

The article headings and section headings in this Agreement are for convenience of reference only and are not to be considered in any interpretation of this Agreement.





CITY Attorney

**EXHIBIT 1: MAXIMUM SERVICE RATES**

**1. Single Family Dwelling Service Rates**

**A. Single Family Dwelling Collection Services Monthly Rate**

Service Category	Monthly Rate
Standard Service (96-Gallon Solid Waste, Recycling and Green Waste Carts)	\$17.59
Animal-Resistant Cart Service Rate	\$22.50
Low Income Senior Citizen Rate	\$13.19
Additional Solid Waste Carts beyond one (1)	\$6.91
Additional charge for Green Waste Carts beyond two (2)	\$6.91
Additional charge for Recycling Material Carts beyond two (2)	\$6.52
On-Premises Collection for qualified person with disabilities	No charge
Holiday Tree Collection 1st Service Work (Day after December 25 through January 15)	No charge

**2. Commercial and Multi-Family Service Rates**

**A. Commercial and Multi-Family Solid Waste Collection Monthly Rates**

Container Type/Size	Frequency of Collections per Week						Additional Pick Up
	1	2	3	4	5	6	
1 cubic yard bin	\$77.91	\$155.82	\$233.73	\$311.64	\$389.55	\$467.46	\$22.26
2 cubic yard bin	\$89.80	\$179.60	\$269.40	\$359.20	\$449.00	\$538.80	\$25.66
3 cubic yard bin	\$117.04	\$234.08	\$351.12	\$468.16	\$585.20	\$702.24	\$33.44
4 cubic yard bin	\$133.54	\$267.08	\$400.62	\$534.16	\$667.70	\$801.24	\$38.15
6 cubic yard bin	\$191.47	\$382.94	\$574.41	\$765.88	\$957.35	\$1,148.82	\$54.71
96-gallon cart	\$33.41	\$66.82	\$100.23	\$133.64	\$167.05	\$200.46	N/A

**B. Commercial and Multi-Family Recycling Collection**

Container Type/Size	Frequency of Collections per Week			
	1	2	3	4
1 cubic yard bin	\$62.33	\$124.66	\$186.98	\$249.31
2 cubic yard bin	\$71.84	\$143.68	\$215.52	\$287.36
3 cubic yard bin	\$93.63	\$187.26	\$280.90	\$374.53
4 cubic yard bin	\$106.83	\$213.66	\$320.50	\$427.33
6 cubic yard bin	\$153.18	\$306.35	\$459.53	\$612.70
96-gallon cart	\$26.73	\$53.46	\$80.18	\$106.91

**C. Commercial and Multi-Family Green Waste Collection**

Container Type/Size	Additional Pick Up				
	1	2	3	4	Additional Pick Up
3 cubic yard bin	\$93.63	\$187.26	\$280.90	\$374.53	\$26.75
4 cubic yard bin	\$106.83	\$213.66	\$320.50	\$427.33	\$30.52
6 cubic yard bin	\$153.18	\$306.35	\$459.53	\$612.70	\$43.76

**D. Commercial Front-End Loader Vertical Compactors**

Container type/size	Frequency of collections per week						Additional Pick up on service day
	1	2	3	4	5	6	
2 Cubic Yard Compactor	\$206.47	\$412.94	\$619.41	\$825.88	\$1,032.35	\$1,238.82	\$206.47
2.5 Cubic Yard Compactor	\$237.47	\$474.94	\$712.41	\$949.88	\$1,187.35	\$1,424.82	\$237.47
3 Cubic Yard Compactor	\$323.51	\$647.02	\$970.53	\$1,294.04	\$1,617.55	\$1,941.06	\$323.51
4 Cubic Yard Compactor	\$397.94	\$795.88	\$1,193.82	\$1,591.76	\$1,989.70	\$2,387.64	\$397.94

### 3. Temporary and On-Call Services

#### A. Temporary Bin

Temporary Bin Flat Rate	Delivery, One Service/Empty, Removal and up to 7 days	Extra Service (Removal, Empty, Re-Delivery) During 7-day period	Additional Days beyond 7-day period
3 Cubic Yard Bin	\$139.37	\$39.82	\$13.55
4 Cubic Yard Bin	\$146.28	\$41.79	\$15.00
6 Cubic Yard Bin	\$171.56	\$49.02	\$17.00

#### B. Compactor Service

Compactor Size/Included Tonnage*	
10 Cubic Yard Compactor (4.0 Tons)	\$381.05
12 Cubic Yard Compactor (5.5 Tons)	\$457.32
15 Cubic Yard Compactor (6.0 Tons)	\$571.57
20 Cubic Yard Compactor (7.5 Tons)	\$762.07
24 Cubic Yard Compactor (8.5 Tons)	\$914.49
25 Cubic Yard Compactor (9.0 Tons)	\$952.60
28 Cubic Yard Compactor (10 Tons)	\$1,066.91
30 Cubic Yard Compactor (11 Tons)	\$1,143.11
34 Cubic Yard Compactor (12 Tons)	\$1,295.74
40 Cubic Yard Compactor** (14 Tons)	\$1,524.15

\*Excess tonnage over included tonnage is charged at current landfill rates \*\* Rate Per Yard (for sizes not listed): \$38.11

#### C. Roll Off Service

Roll Off Box Size/Included Tonnage*	
Initial Delivery Fee (Any Size Box)	\$57.11
14 Cubic Yard Flat Roll Top (Includes 3 Tons)	\$211.01
20 Cubic Yard Flat Roll Top (Includes 4 Tons)	\$289.07
30 Cubic Yard Flat Roll Top (Includes 6 Tons)	\$433.36
14 Cubic Yard Roll Off (Includes 3 Tons)	\$181.86
20 Cubic Yard Roll Off (Includes 4 Tons)	\$259.92
30 Cubic Yard Roll Off (Includes 6 Tons)	\$389.58

\*Excess tonnage over included tonnage is charged at current landfill rates

### 4. Rates for Additional Services

#### A. Single Family Dwelling: Rates for Additional Services

Service	Charge	Description
<b>Additional Trip for Bulky Item(s)</b>	\$53.87	Customer requests bulky service after using 4 items included annually (per occurrence, includes first item)
<b>Additional Bulky Item(s)</b>	\$12.30	Additional items beyond those included in base service or the first item included in Additional Trip for Bulky Item (per item, per service)
<b>Side yard or Back yard service</b>	\$12.57	Driver enters property to bring carts to the truck for service, provided service can be completed safely (per cart, per month)
<b>Activation fee</b>	\$50.30	This fee is for new accounts established after the initial service rollout for the new agreement
<b>Restart Fee after Vacancy</b>	\$0	If account is in property owner’s name and the carts remain at the property during vacancy, no restart fee. If account is in tenant’s name and new service is established including billing set-up and delivery of carts, the Activation Fee applies
<b>Additional Cart Exchanges</b>	\$56.72	Additional charge for Cart size exchange beyond one (1) each for solid waste, recycling and green waste cart per year.
<b>Cart Replacement</b>	\$94.18	Additional charge for Cart replacement (if due to customer negligence or repetitive loss)
<b>Animal-Resistant Cart replacement</b>	\$267.58	Additional charge for Animal-Resistant Cart replacement (if due to customer negligence or loss)

**Residential Late Fee:** 2.5% of balance or \$15.00 minimum charge, whichever is greater. Charge is applied to balances more than 90 days from date of invoice. Residential account is due upon receipt, but delinquent at the 91st day (per occurrence)

#### B. Commercial and Multi-Family: Rates for Additional Services

Service	Charge	Description
<b>Roll Out Charge up to 30 feet. One-way distance</b>	\$26.63	WM reserves the right to decline this service if service is deemed unsafe for the driver (per bin per service)
<b>Roll Out Charge more than 30 feet one-way distance</b>	TBD	WM reserves the right to decline this service if service is deemed unsafe for the driver (per bin per service)
<b>Delivery - Bins</b>	\$47.84	Up to 2 per trip (after initial rollout of new agreement)
<b>Removal - Bins</b>	\$47.84	Up to 2 per trip (after initial rollout of new agreement)
<b>Delivery - Carts</b>	\$36.44	Up to 3 per trip (after initial rollout of new agreement)
<b>Removal - Carts</b>	\$36.44	Up to 3 per trip (after initial rollout of new agreement)
<b>Extra Pickup on Service Day</b>	Monthly Rate / 3.5	Per Bin or Cart serviced for extra pickup
<b>Extra Pickup on non-Service Day</b>	\$75.00 + (Monthly Rate / 3.5)	Per Bin or Cart serviced for extra pickup
<b>Contamination charge</b>	\$34.50	Per Incident. Charge is in addition to standard haul charge.

**B. (Continued) Commercial and Multi-Family: Rates for Additional Services**

<b>Service</b>	<b>Charge</b>	<b>Description</b>
Lock Sale - No Lock Bar	\$15.00	Upon customer request for lock. Per bin
Lock Sale – With Lock Bar	\$108.00	Upon customer request for lock and attachment of lock bar mechanism to bin. Per bin
Lock service charge	\$1.55	Per bin, per service
Container clean/exchange	\$65.00	Upon customer request for cleaning or exchange of bin. Per bin
Replace damaged container Damage not caused by WM	TBD	Charge will vary based on repair or replacement cost (per occurrence)
Bulky Item Collection	\$75.00	Per trip (includes one item)
Additional Bulky Item	\$12.30	Per additional item (same trip)
On-Call Electronic Waste Collection	\$50.00	Per Pick Up
On-Call Universal Waste Collection	\$75.00	Per Pick Up
Account reactivation charge	\$50.30	Due to bad pay, where container delivery is not required (per occurrence)
Account reactivation charge	\$134.58	Due to bad pay, where container delivery is required (per occurrence)

**C. On-Call Servicer Rates for Additional Services**

<b>Service</b>	<b>Charge</b>	<b>Description</b>
Safety Cone Placement	\$20.35	Upon customer request (per occurrence)
Immediate Burial	\$196.83	Upon customer request (per occurrence) Charge does not include disposal charges
Relocate	\$57.11	Upon customer request to move temporary bin or roll off container to another place on the property without emptying contents (per occurrence)
Steam Clean	\$203.63	Per occurrence
Trip	\$57.11	Upon completion of customer requested trip to service temporary or roll off container when customer postpones or cancels service (per occurrence)
Contamination charge	\$47.35	Based on bin or cart capacity (per yard)
Demurrage / Inactivity	\$15.00	Charge per day after first 10 days for roll off containers. Day count restarts after each haul.
Damaged RO Box	TBD	Based on Repair Cost (per occurrence)
Charge per Ton for more than included Tons	Current disposal rate	Per ton

**Commercial, Multi-Family and On-Call Service Late Fee:** 2.5% of balance or \$15.00 minimum charge, whichever is greater (per occurrence)

**EXHIBIT 2: RATE ADJUSTMENT METHODOLOGY**

Step One: Calculate % Change in Indexes		A	B	C	D	E
Row	Rate Component	Old Index (Example CPI, Actual Gate Fees)	New Index (Example)	% Change in Index ((Column B/Column A)-1)	Percentage Weight	Total Weighted Change (Column C x Column D)
1	Service Component <sup>1</sup>	241.00	246.00	2.07%	100.00%	2.07%
2	Disposal Component <sup>2</sup>					
	Landfill <sup>3</sup>	\$24.50	\$24.99	2.00%	62.40%	1.25%
3	Recycling <sup>4</sup>	\$97.00	\$99.91	3.00%	36.00%	1.08%
4	Green Waste <sup>5</sup>	\$23.93	\$24.89	4.01%	1.60%	0.06%
5	Total Disposal Component				100.00%	2.39%
Step Two: Determine Weighted Change		F	G	H		
Row	Rate Component	Maximum Allowed % Change (Column E, Rows 1 and 5)	Component Weighting <sup>6</sup>	Total Weighted Change (Column F x Column G)		
6	Service	2.07%	77.00%	1.5900%		
7	Disposal	2.39%	23.00%	0.5500%		
8	Total % Rate Adjustment			2.1400%		
Step Three: Apply % Change to Rates		I	J	K	L	
Row	Rate Category	Current Rate	Total Weighted % Change (from Column H, Row 8)	Rate Increase or Decrease (Column I x Column J)	Adjusted Rate (Column I + Column K)	
9	Example Residential Service	\$30.00	2.1400%	0.64	\$30.64	
10	Example Commercial	\$35.00	2.1400%	0.75	\$35.75	
11	Example Roll Off	\$40.00	2.1400%	0.86	\$40.86	
Step Four: Determine Cost Components Weights for Future Rate Adjustment Calculation		M	N	O	P	Q
Line	Adjustment Factor	% Change as Applied to Rate Adjustment (Columns C, Rows 2 - 4)	Disposal Component (Column D, Rows 2 - 4)	Increase in Disposal Components (Column M x Column N)	Disposal Component Increased (Column N + Column O)	Disposal Components Reweighted to Equal 100% for future Adjustments
	Disposal					
12	Landfill	2.0000%	62.40%	1.25%	63.65%	62.17%
13	Recyclables	3.0000%	36.00%	1.08%	37.08%	36.21%
14	Green Waste	4.0100%	1.60%	0.06%	1.66%	1.62%
15	Disposal Component Total		100.00%	2.39%	102.39%	100.00%
			Cost Component (Column G, Rows 6 - 7)	Increase in Cost Components (Column N, Rows 16, 17 x Column O, Rows 16, 17)	Cost Component Increased (Column O, Rows 16,17 + Column P, Rows 16,17)	Cost Components Reweighted to Equal 100% for future Adjustments (Column P, Rows 16,17 / Column P, Row 18)
16	Service Component	2.0700%	77.00%	1.59%	78.59%	76.94%
17	Disposal Component	2.3922%	23.00%	0.55%	23.55%	23.06%
18	Total			2.14%	102.14%	100.00%

- CPI (Consumer Price Index for All Urban Consumers (CPI-U): U. S. city average for garbage services)
- Initial weights in Column E as computed in Exhibit 3. Future weights as computed in step four
- Gate fee at Carson City Sanitary Landfill
- Gate fee at Waste Management Eco Center Campus
- Gate fee at Nevada Organics
- Initial weights 77% Service, 23% Landfill. Subsequent weights as per recalculation in step four.

**EXHIBIT 3: INITIAL DISPOSAL INDEX**

<b>Disposal Component</b>	<b>Estimated Tonnage</b>	<b>Percentage Weight</b>	<b>Gate Fee Per Ton</b>	<b>Per Ton Index</b>	<b>Cost Component</b>
<b>Landfill</b>	39,345	85.32%	\$24.50	20.90	62.4%
<b>Processing Recyclables</b>	5,728	12.42%	\$97.00	12.05	36.0%
<b>Processing Green Waste</b>	1,042	2.26%	\$23.93	0.54	1.6%
	<b>46,115</b>	<b>100.00%</b>		<b>\$33.49</b>	<b>100.0%</b>



**EXHIBIT 4: LIST OF CITY SERVICE LOCATIONS**

Description	Address	Containers
Public Works	3505 Butti Way	1 - 4 CY; 1 - 4 CY (Recycle)
Corporation Yard (Warehouse)	3303 Butti Way (Bldg #13)	1 - 4 CY; 1 - 4 CY (Recycle)
Corporation Yard (Parks)	3303 Butti Way (Bldg #9)	2 - 6 CY; 1 - 4 CY (Recycle)
Corporation Yard (Fleet)	3303 Butti Way (Bldg #2)	1 - 6 CY
WWTP	3320 E. Fifth Street	3 - 1 CY; 10 - 2 CY; 4 - carts
Library	900 N. Roop Street	1 - 3 CY; 1 - 4 CY
JAC	3770 Butti Way	1 - 4 CY
Lone Mountain Cemetery	1044 Beverly Drive	1 - 20 CY
Adams Hub	111 W. Proctor Street	2 - carts
Fire Station 51	777 S. Stewart Street	1 - 4 CY
Fire Station 52	2400 E. College Parkway	1 - 4 CY
Fire Station 53 / Dispatch	4649 Snyder Avenue	1 - 4 CY
City Hall	201 N. Carson Street	1 - 4 CY
Community Center	851 E. William Street	1 - 4 CY

<b>Description</b>	<b>Address</b>	<b>Containers</b>
<b>Senior Thrift Shop</b>	901 Beverly Drive	1-6 CY; 1 - 4 CY (Recycle)
<b>Northgate</b>	2621 Northgate Lane	1 - 3 CY; 1 - 4 CY; 1 - 6 CY
<b>Health Department</b>	900 E. Long Street	1 - 4 CY
<b>Senior Center</b>	911 Beverly Drive	1 - 6 CY
<b>Sheriff</b>	911 E. Musser Street	1 - 6 CY
<b>Court House</b>	885 E. Musser Street	2 - 6 CY; 1 - 4 CY (Recycle)
<b>Juvenile Court</b>	1545 E. Fifth Street	1 - 4 CY; 5 - carts

<b>Description</b>	<b>Address</b>	<b>Containers</b>
<b>Juvenile Detention / Probation</b>	740 S. Saliman Road	2 - 4 CY
<b>Multi-Purpose Athletic Center</b>	1860 Russell Way	1 - 6 CY
<b>Long Ranch Park</b>	Norfolk Drive / Oxford Court	1 - 20 CY
<b>Mills Park</b>	Seely Loop	2 - 6 CY; 2 - 20 CY
<b>Fuji Park (Pond)</b>	Old Clear Creek Road	1 - 4 CY; 1 - 4 CY (Animal Proof)
<b>Fuji Park (Event Hall)</b>	Old Clear Creek Road	2 - 6 CY
<b>Fuji Park (Rodeo / Maint Shop)</b>	Old Clear Creek Road	1 - 4 CY; 1 - 6 CY; 1 - 30 CY
<b>Fuji Park (Dog Park)</b>	Old Clear Creek Road	1 - 4 CY; 1 - 30 CY

<b>Pete Livermore Sports Complex</b>	Livermore Lane	4 - 4 CY; 1 - 30 CY
<b>Governors Field</b>	Evalyn Drive	1 - 4 CY; 1 - 6 CY; 1 - 20 CY
<b>Centennial (Upper Ball Fields)</b>	Centennial Park Drive	1 - 4 CY; 1 - 6 CY
<b>Centennial (Lower Ball Fields)</b>	Centennial Park Drive	2 - 4 CY

City may add service at these or future sites:

- Fire Station 54
- Ross Gold Park
- Quill Water Treatment Plant
- Partnership Building (1711 N. Roop Street, near Senior Center)

**EXHIBIT 5: LIST OF RECYCLABLE MATERIALS**

The following list of Recyclable Materials may be updated upon agreement of the CITY and the CONTRACTOR.

1. Cardboard
2. Mixed paper
3. Aluminum beverage containers
4. Metal food containers
5. Glass food and beverage containers
6. Plastics #1-7

**EXHIBIT 6: MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (“MOU”) is entered into this \_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), by and between Waste Management of Nevada, Inc., a Nevada corporation (“WM”), and Carson City, a consolidated municipality and political subdivision of the State of Nevada (“CITY”), (each individually referred to as “Party” and collectively referred to as the “Parties”).

- A. WM has a current franchise agreement with CITY that provides for solid waste services. The terms of the existing agreement do not specifically address current concerns raised by the CITY regarding customer services.
- B. The CITY issued an RFP and selected WM as the provider with which they are continuing negotiations.
- C. In exchange for continuing those negotiations and successful execution of a new franchise agreement, CITY requires certain assurances regarding customer service and action taken by WM to provide those assurances.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, CITY and WM agree as follows:

1. WM will have the local call center fully operational by April 1, 2019.
2. WM activated a local phone number at the Sheep Drive facility that is now operational 775.343.7596.
3. CarsonCity@wm.com, a local email address, is now active and is monitored in real time as the messages come in or at a minimum of three (3) times per hour.
4. WM produced an insert to be included in the November billing containing the local phone number and the email contact information.
5. WM placed new phone number decals on WM trucks.
6. WM has started the hiring process for customer service representatives, with offers of employment to be made no later than February 1, 2019.
7. WM’s contracts with AT&T are being modified to provide more bandwidth at the Sheep Drive facility to accommodate call center needs.
8. WM will order call center phone systems at the first of the year 2019.
9. WM will mail out recycling calendars in January and again as part of the new service rollout.

10. WM is developing a local website that will be accessible to customers no later than February 1, 2019.

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have executed this Memorandum of Understanding on the day and year first written above.

**CITY OF CARSON CITY**

**CONTRACTOR**

\_\_\_\_\_  
Mayor                      Date

\_\_\_\_\_  
Signature                      Date

\_\_\_\_\_  
Name, Title