

## FRANCHISE AGREEMENT

THIS AGREEMENT (Agreement), dated 2/1/2023 is entered into by and between the CITY OF MORGAN HILL, a Municipal Corporation ("CITY") and RECOLOGY SOUTH VALLEY, a California Corporation ("COMPANY").

### RECITALS

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

- A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (Public Resources Code Section 40000, et seq.; hereinafter the "Act") established a solid waste management process which requires cities and other local jurisdictions to implement source reduction, reuse, and recycling as integrated waste management practices; and
- B. The State of California has found and declared that the amount of refuse generated in California, coupled with diminishing Disposal capacity and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement aggressive integrated waste management programs. The State has, through enactment of AB 939 and subsequent related legislation including, but not limited to: the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible State agency, and all local agencies, to promote diversion and to maximize the use of feasible waste reduction, reuse, recycling, and composting options in order to reduce the amount of refuse, including Organic Waste, that must be disposed; and
- C. Pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an exclusive right be awarded to a qualified contractor to provide for the collection of Recyclable Materials, Organic Materials, Construction and Demolition Debris, and Solid Waste; and
- D. The City Council has enacted Chapter 13 of the Morgan Hill Municipal Code, which establishes standards for the Collection and removal of Solid Waste and Recyclables, the Disposal of Solid Waste, the Recycling of Recyclables, and requirements for Collection Agreements; and

- E. CITY and COMPANY have implemented a new, expanded system of waste collection and management services to more efficiently provide for the collection of such materials, and to facilitate achievement of City's obligations pursuant to the Act and to further expand collection and management services to facilitate achievement of CITY'S obligations pursuant to SB 1383, SB 341, SB 1826 and AB 827; and
- F. Pursuant to this Agreement, CITY desires to engage COMPANY as an independent contractor to exclusively provide Solid Waste, Organic Materials and Recyclable Materials Collection Services in the City. COMPANY shall furnish all personnel, equipment, and supplies necessary to collect, or otherwise remove and dispose of all Solid Waste, Organic Materials and Recyclable Materials, as defined herein, generated or accumulated at all Residential and Commercial/Industrial Premises within the City, on the terms and conditions specified herein and except as otherwise specifically provided herein; and
- G. COMPANY represents and warrants to CITY that it has the experience, responsibility, and qualifications to implement the collection of Solid Waste, Organic Materials and Recyclable Materials, and to arrange with residents and other entities in the City for the collection, safe transport, Processing, and Disposal of all materials in compliance with Applicable Law and the provisions of this Agreement; and
- H. CITY and COMPANY are mindful of the provisions of the laws governing the safe collection, transport, Recycling, and Disposal of Solid Waste, including the Act, RCRA, and CERCLA; and
- I. COMPANY currently uses natural gas to fuel the collection vehicles that collect waste throughout the City's incorporated limits. When alternatives to natural gas become commercially available, City and COMPANY mutually desire to explore, in a mutually agreed manner, collection vehicle fueling alternatives such as electricity, hydrogen, SB 1383 compliant biofuels, and hybrid propulsion in order to further reduce air pollution, carbon emissions and noise and to enhance community health as well as address SB 1383 procurement mandates.
- J. CITY and COMPANY recognize that CITY may have the need for temporary services to be provided by COMPANY that arise and fluctuate over time and that the provision of these services result in additional costs (EXCEPTIONAL COSTS).
- K. City has negotiated an agreement for waste disposal capacity with Waste Solutions Group of San Benito that is close to COMPANY's transfer facilities and City desires that COMPANY deliver waste to this facility in order to reduce air



pollution and greenhouse gas emissions associated with transportation of solid waste collected in CITY; and

- L. CITY and COMPANY desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, CITY is not thereby becoming a "generator" or "arranger" as those terms are used in the context of CERCLA Section 107 (a) (3), and that COMPANY will not make any claims that CITY is "arranging for" the Collection of Solid Waste, Construction and Demolition Debris, Organic Materials and Recyclable Materials from Residential and Commercial/Industrial Premises in the City, and transporting of same for Disposal, Recycling of Recyclables, and Processing of Organic Materials; and
- M. As a material inducement to CITY entering into this Agreement, COMPANY has agreed to fully indemnify CITY in the manner set forth in Section 13 hereof against all claims, losses, lawsuits or actions relating to any Hazardous Waste at any place where COMPANY transfers, stores, processes, or disposes of Solid Waste, Organic Materials or Recyclables pursuant to this Agreement, or its activities pursuant to this Agreement that result in a release of hazardous substances into the environment; and
- N. As a further material inducement to CITY entering into this Agreement, COMPANY has agreed to fully indemnify CITY against all claims, losses, lawsuits or actions relating to any Hazardous Waste at Pacheco Pass Landfill relating to Solid Waste Collected by COMPANY from within the City and disposed of before or after the date of this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to as follows:

### **Definitions**

Whenever any term used in this Agreement has been defined by Section 13.28 of Chapter 13 of the Morgan Hill Municipal Code, the definitions in Section 13.28 shall apply unless the term is otherwise defined in this Agreement. Whenever any term used in this Agreement has been defined by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in Division 30, Part 1, Chapter 2, shall apply, unless the term is otherwise defined in this Agreement or in Chapter 12 of the City Code. Whenever any term used in this Agreement has been defined by Title 14, Division 7, Chapter 12, Article 1 of the California Code of Regulations, the definition in Title 14, Division 7, Chapter 12, Article 1 of the California Code of Regulations shall apply unless the term is otherwise defined in this agreement, Chapter 12 of the City Code or Division 30, Part 1, Chapter 2 of the California Public Resources Code. In addition, the following definitions are hereby incorporated into this Agreement:

- 1 "Act" means the California Integrated Waste Management Act of 1989.

2 “Applicable Law” means all laws, ordinances, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental body that are in force on the Date of this Agreement and as they may be enacted, issued or amended during the Term.

3 “CERCLA” means the Comprehensive Environmental Responsibility Compensation and Liability Act, 42 U.S.C.A. Section 9601 *et seq.*, as amended or superseded, and the regulations promulgated thereunder.

4 “Change in Law” means any of the following events or conditions, which has a material and adverse effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations):

(a) the enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the date of this Agreement; or

(b) the order or judgment of any governmental body, on or after the date of this Agreement, 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 CITY or of COMPANY, 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.

5 “City Code” means the Municipal Code of the City of Morgan Hill, California, as it presently exists or may subsequently be amended.

6 “City Facilities” means: City Hall, Council Chamber Building, El Toro Fire Station, Dunne Hill Fire Station, Morgan Hill Historical Society/Villa Vira Monte, Community and Cultural Center, Police Facility, Outdoor Sports Center, Aquatics Center, Community Garden, Parking Garage, Playhouse, Corporation Yard, City parks, city garbage cans, if any, on city streets, and any other facility or real property used primarily by the CITY that may be constructed by, acquired by or leased to CITY during the Term.

7 “CalRecycle” means the California Department of Resources Recycling and Recovery.

8 “Collection Services” means all of the duties and obligations of COMPANY hereunder.

9 “Compost” shall have the meaning set forth in Public Resources Code Section 40116, as it now exists or may subsequently be amended.

10 “Consumer Price Index” or “CPI” means the Consumer Price Index (CPI) All Urban Consumers for the San Francisco - Oakland - San Jose Metropolitan Area, base period 1982-84=100.

11 “Construction and Demolition Debris” means discarded materials removed from construction, remodeling, repair, demolition, or renovation operations on any pavement, house, commercial building, or other structure, or from landscaping. Such materials include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastics, roofing material, cardboard, carpeting, cinder blocks, concrete, copper, electrical wire, fiberglass, Formica, granite, iron, lead, linoleum, marble, plaster, plant debris, pressboard, porcelain, steel, stucco, tile, vinyl, wood, masonry, rocks, trees, remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, packaging and rubble resulting from construction, remodeling, renovation, repair and demolition operations on pavements, houses, commercial buildings and other structures.

12 “Control” means, for purposes of this Agreement, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation, partnership, joint venture, or other association.

13 “Diversion” means diversion as defined in Public Resources Code §40124.

14 “Diversion Rate” means the percent of Solid Waste diverted from Disposal.

15 “Environmental Statutes” means, for the purposes of this Agreement, 42 U.S.C. Sections 6901, *et seq.* and Sections 9600, *et seq.*, and California Health and Safety Code Sections 25300, *et seq.*, or successor statutes.

16 “Final Regulations” means the regulations under SB 1383 issued in November 2020.

17 “Food Scraps” means the following materials, that have been source-separated from other Solid Waste Matter : (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) discarded paper (including paper containers and cartons) that is not coated, lined or waxed, and that is contaminated with Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat waste, and fish waste; and (v) vegetable trimmings and houseplant trimmings. Food Scraps excludes manure, pet wastes, dead animals, and rotten material. Food Scraps are a subset of Organic Materials.

18 “Gross Rate Revenues” means all Rate revenues collected by COMPANY for providing Collection Services.

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

20 "Organic Material(s)" means Food Scraps and/or Yard Trimmings, either commingled or separate, that have been source-separated from other Solid Waste Matter.

21 "Owner" means the person holding the legal title or having a right to possession to the real property to which Collection Services are provided.

22 "Rates" means the service charges and Special Charges for Collection Services charged to each Subscriber receiving service under this Agreement.

23 "Reasonable Increased Costs" and EXCEPTIONAL COSTS shall include a profit margin to COMPANY calculated based on an operating margin of 90% on all costs except: governmental or regulatory fees, franchise fees, the cost of a performance audit under section 2(B), the cost of compost provided under 6(J), or temporary services provided by COMPANY to CITY and charged at the rates in Exhibit A.

24 "Recyclable Material(s)" or "Recyclables" means the following materials, that have been source-separated from other Solid Waste Matter: (a) newspaper; (b) aluminum and ferrous cans; (c) glass jars and bottles; (d) certain plastic containers and certain packing materials; (e) certain scrap metals; (f) mixed paper including mail, magazines, catalogs, paperboard boxes, envelopes, advertisements, books without hardbound covers, and phone books; (g) corrugated cardboard; and (h) such other material that Company and City mutually agree may be accepted or removed from the foregoing for curbside recycling under this Agreement.

25 "Related Party" means any other Person under the same ownership and/or Control as Recology South Valley.

26 "Residue" means materials that remain after Processing Recyclable Materials and Organic Materials, which cannot be recycled, marketed, or otherwise utilized, including but not limited to materials such as rocks, contaminated paper, putrescible waste, and other debris.

27 "Schedule of Rates" means a listing of all charges per unit of measure established at amounts contained in Exhibit A and modified pursuant to the terms and conditions in Section 9 or Exhibit A2.

28 "Solid Waste" or "Refuse" means solid waste as defined in California Public

Resources Code, Division 30, Part 1, Chapter 2, Section 40191 and regulations promulgated thereunder, but excluding Recyclable Material, Organic Material, Construction and Demolition Debris, ashes, industrial wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, sewage sludge, biosolids, and manure. Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe collection, Recycling, treatment, and Disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time.

29 “Special Charges” means extra charges for certain special services for Residential and Commercial/Industrial Subscribers that are contained on the Schedule of Rates, and that may be billed by COMPANY.

30 “State” means the State of California.

31 “Street Sweeping Fines” means material collected as a result of street sweeping operations.

32 “Subscriber” or “Customer” means an individual or entity that subscribes to Collection Services provided by COMPANY pursuant to this Agreement.

34 “Term” means the term of this Agreement, as set forth in Section 2.

35 “Yard Trimmings” means the following materials, that have been source-separated from other Solid Waste Matter: green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, Christmas trees, small pieces of unpainted and untreated wood, and other types of plant materials resulting from normal yard and landscaping maintenance, provided that all such materials are less than six inches (6”) in diameter and three feet (3’) in length. Notwithstanding the foregoing, Yard Trimmings do not include palm fronds, oleander, poison ivy or poison oak. Yard Trimmings are a subset of Organic Materials.

36 “Tipping Fee” means the fee charged by a Disposal or Processing facility to dispose or process one (1) Ton of municipal Solid Waste, not including any charges for Special Wastes, Bulky Waste, or Special Items.

37 “Ton” means a “short ton” of 2,000 pounds.

## **Section 1. Franchise Grant**

CITY grants to COMPANY, and COMPANY hereby accepts from CITY the exclusive right, franchise and privilege to collect and dispose of all Solid Waste Matter produced, kept or accumulated in the City of Morgan Hill, together with the right and privilege to use and operate



upon the CITY maintained streets and other rights-of-way to the extent necessary to perform COMPANY's obligations under this Franchise Agreement.

The right and privilege herein granted shall be subject to compliance with the provisions of CITY's ordinances pertaining to the accumulation, collection and removal of Solid Waste Matter as they presently exist or as they may be amended during the term hereof, or any extension thereof, and any applicable State and Federal statutory or administrative laws and rules. For the purposes of this Agreement "Solid Waste Matter" is defined to mean Solid Waste, Recyclable Material, Organic Material, and Construction and Demolition Debris. COMPANY's exclusive rights shall be subject to the following exceptions:

(A) Nonresidential recyclable materials source separated from other wastes by the waste generator that can be at least 95% recycled and for which the COMPANY cannot collect and recycle at a complete cost to the customer equal to or less than the complete cost to the customer charged by other vendors. "Complete cost" means all fees charged by a vendor to a nonresidential generator for recycling, hauling, or other services.

(B) Any materials for which there is no charge for the hauling, handling, or disposal or any other fee designed to compensate the vendor removing the materials.

This Agreement shall become effective on the date set forth in the introductory paragraph. Company accepts the terms of this Agreement as defining the scope of its exclusive rights to collect and dispose of Solid Waste Matter produced, kept or accumulated in the City of Morgan Hill, and this Agreement supersedes all prior franchise rights and prior agreements, including but not limited to the Original Agreement. Company waives any right or claim to provide solid waste and recyclables collection services in the City under any prior grant of franchise, contract, license or permit, including but not limited to the Original Agreement, and any right under Section 49520, et seq. of the Public Resources Code. THIS PROVISION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

## **Section 2. Franchise Term and Renewal**

(A) The term of the Agreement shall be for a period of ten (10) years and six (6) months, commencing at 12:01 a.m. on the 1<sup>st</sup> day of January, 2023, and ending at 11:59 p.m. on the 30<sup>th</sup> day of June 2033, except if earlier terminated as herein otherwise specified. During calendar year 2031, the parties shall meet and confer on the possible extension of the Term.

(B) City has the right, at any time during the term of this agreement, to conduct an audit of the performance of COMPANY (herein called the "Performance Audit"), which shall be conducted as set forth in subsection (C) of this Section 2.

(i) If after the City Council of CITY has reviewed a particular Performance Audit and has considered any evidence presented by COMPANY in connection therewith, the

council determines to its satisfaction that all covenants, provisions, terms and conditions of this Agreement on the part COMPANY to be performed, kept and observed, have not been fully and faithfully performed, kept and observed, then City may provide a notice of default as provided in Section 22(B), setting forth the specific instances of non-performance of this Agreement that City wishes company to correct. If Company fails to correct such instances of non-performance within the time frames required by Section 22(B), then this Agreement may be terminated by CITY at its option and without prejudice to any other remedy to which it may be entitled to either at law, in equity, or under this Agreement by giving written notice of termination either by mail or personal service, to COMPANY not less than thirty (30) days prior to the date upon which the termination is to become effective. This right of termination shall be in addition to the right of CITY to terminate this Agreement under the provisions of Section 22 hereof.

- (ii) In connection with the review of a particular Performance Audit, CITY reserves the right to propose any amendment or amendments of this Agreement which the City Council of CITY determines to be necessary by reason of the findings or results of the Performance Audit to carry out the intent of the terms and conditions of this Agreement.
  - (iii) In conjunction with any Performance Audit, CITY reserves the right to require changes to COMPANY'S operations that CITY determines to be necessary or appropriate by reason of the findings or results of the Performance Audit to carry out the intent of the terms and conditions of this Agreement. If the changes to the COMPANY'S operations entail additional costs or require additional services to be provided, COMPANY and CITY shall mutually agree on the compensation to be provided to COMPANY in advance of COMPANY's implementation of such change.
- (C) The performance audit shall:
- (i) be performed by a qualified firm to be selected by CITY.
  - (ii) be totally paid for by COMPANY and included as EXCEPTIONAL COSTS that are recovered in the next annual rate adjustment, and
  - (iii) address all appropriate areas including, but not limited to the following areas, and shall provide specific recommendations for improvement in each area, namely:
    - (a) Overall organizational structure and management systems and procedures.

- (b) Efficiency of collection operations, including any analysis of routes, schedules and the impact of franchise requirements.
- (c) Compliance by COMPANY with provisions of this Agreement and the provisions of the SB 1383 regulations that apply directly to COMPANY by operation of law or are included in Exhibit C of this Agreement.
- (d) Staffing and management practices, including the deployment of management and supervisory personnel.
- (e) Financial management practices, including COMPANY's billing and collection system and its policies with regard to uncollected accounts.
- (f) Procedures for receiving and resolving customer complaints and concerns, including damage to customer-owner containers and disappearance of container covers.
- (g) Procedures for the acquisition, maintenance and replacement of equipment; types of equipment; rationale for recent capital investments; and financing options.
- (h) Utilization and management of facilities.

### **Section 3. City Fees**

CITY and CONTRACTOR acknowledge that an exclusive franchise is a special agreement that has been negotiated between CITY and CONTRACTOR. The exclusive franchise that has been granted through this Agreement is intended to allow CONTRACTOR to use CITY property to provide collection services. The amount of the fees paid by COMPANY to CITY as set forth in this Agreement, in the aggregate, does not exceed CITY's reasonable costs in conferring the benefits or granting the privileges conferred or granted by this Agreement to COMPANY, including, without limitation, access to CITY streets to operate heavy equipment, to collect refuse, and to place or to allow to be placed COMPANY's collection containers within public rights of way; and the exclusive right to collect refuse within CITY's jurisdiction for profit. Such costs to CITY are impossible or impracticable to calculate, but include, without limitation, staff time and the costs of legal counsel and other outside consultants to negotiate and to administer this Agreement, in addition to the City's costs to maintain its streets and sidewalks, which COMPANY uses in the performance of services hereunder, it being agreed and understood that COMPANY's vehicles used in performing those services are heavier than average vehicle weights such that they may cause greater wear and tear on CITY streets than typical vehicles.

In consideration of the exclusive franchise granted to CONTRACTOR by this Agreement,

CITY shall be paid and retain a franchise fee of fifteen and one-half percent (15.5%) (which was negotiated in good faith and at arms-length, does not exceed the fair market value of CITY property used by CONTRACTOR pursuant to this Agreement, and is consistent with the franchise fees paid by franchise waste haulers in other, similar jurisdictions in California) of all revenues received by the COMPANY from customers for services provided by the COMPANY in the CITY hereunder. These revenues shall include, but shall not be limited to, fees received from customers for all regularly scheduled services, fees for "on-call" services, and all other revenues received by the COMPANY resulting from the COMPANY's provision of services within the CITY, but excluding revenues received from recyclable commodities or compost.

Quarterly franchise fee payments must be computed and paid by COMPANY to CITY's Finance Department on or before April 30, July 31, October 31, and January 31 for the prior calendar quarter.

If any franchise fee payment, or recomputed amount, is not made on or before the due dates specified above, COMPANY must pay as additional compensation, an interest charge, computed from the applicable due date, at an annual rate equal to the prevailing commercial prime interest rate in effect on the due date, plus one percent (1%).

In addition to any late payment made in accordance with the above paragraph, if a payment is overdue by sixty (60) days or more, COMPANY will pay to CITY a sum of money equal to five percent (5%) of the amount due in order to defray additional costs and expenses incurred by CITY as a consequence of that delinquent payment.

No acceptance of any payment by CITY may be construed as an accord that the amount is in fact the correct amount, nor may acceptance of payment be construed as a release of any claim CITY may have against COMPANY for any additional sums payable under the provisions of this Agreement.

All amounts paid are subject to independent audit and recomputation by CITY. If, after audit, such recomputation indicates a franchise fee underpayment, COMPANY shall pay to CITY the amount of the underpayment within twenty (20) days of receipt of written notice from CITY that such is the case. If, after audit, any recomputation indicates a franchise fee underpayment of more than three percent (3%), COMPANY must also reimburse CITY, within twenty (20) days of written notification, for all reasonable costs and expenses incurred in connection with that audit and recomputation.

**Section 4.     Reserved**

**Section 5.     Customer Billing Practices**

COMPANY shall bill all customers on a monthly, bimonthly, or quarterly basis. Customer bills shall be on a format approved by the CITY and must be clear, concise, and understandable.

Bills also must clearly delineate all activity during the billing period, including optional charges, rebates, and credits. All bills shall only contain charges and rates that have been approved by the CITY for services performed under this contract.

COMPANY's bills to customers shall be due 60 days after the billing date. COMPANY may charge customers who have not paid their bill on time a late fee equal to one and one-half percent (1.5%) per month of the bill amount.

The first billing to a customer after the start of service or a change of service shall be prorated based upon when the new or changed service commenced. Customers shall not be charged a late fee or otherwise penalized for any failure by COMPANY, including the failure to timely or correctly bill the customer.

In case of a billing dispute, COMPANY shall respond in writing to a written complaint from a customer within thirty (30) days.

COMPANY shall provide credits or refunds to customers who have been missed upon request provided that: (A) the customer notifies COMPANY by the end of the next business day; and (B) COMPANY is unable to provide collection within two (2) days after notification. For each event that service has been missed, the credit shall equal a pro-rata share of the billing for one full week. All credits for service must be issued no later than the customer's next billing cycle following the determination that a credit is warranted. Credit determinations by COMPANY shall be completed within thirty (30) days. For customers terminating service, refunds shall be issued promptly, but no later than thirty (30) days after the customer's last day of service.

COMPANY shall enter into good faith negotiations with the owners or managers of mobile home parks and other commonly-billed developments to develop an equitable billing and monitoring system.

Unless otherwise expressly provided in this Agreement, all services provided by COMPANY hereunder shall be provided to customers that sign up for service with COMPANY and at rates not exceeding the rates provided for in this Agreement.

## **Section 6. Franchise Services**

(A) COMPANY shall furnish the personnel, labor and equipment required for the billing, payment acceptance, collection, removal, handling, transfer, processing, marketing and disposal of all Solid Waste Matter generated within the corporate limits of the City of Morgan Hill, and to sweep all public streets and parking lots of City Facilities (as designated in Exhibit G) as set forth in Exhibit F, all in accordance with the terms and conditions set forth in this Agreement. COMPANY shall also provide equipment, vehicles, personnel and supervision for the curbside collection of Recyclable Material and Organic Material to all single-family units and multi-family



units receiving residential Refuse collection and disposal service from COMPANY in Morgan Hill and for the collection of Recyclable Material and Organic Material from business establishments receiving Refuse collection and disposal service from COMPANY in Morgan Hill, all in accordance with the terms and conditions set forth in this Agreement. All containers provided by COMPANY shall conform to the provisions of Exhibit C. COMPANY shall collect all Recyclable Material and Organic Material placed in appropriate containers and properly set out by the generator.

(i) Organic Material shall be placed by the customer in a COMPANY-provided container or customer provided thirty-two-gallon (32-gallon) container or tied in bundles no greater than three (3) feet in length and two (2) feet in diameter. For residential customers with cart service, up to seven (7) additional thirty-two gallon (32-gallon) containers or bundles may be set out for collection by COMPANY.

(ii) Upon request from a resident, COMPANY may send a representative to a home to verify that excess Yard Trimmings generated have been generated from that resident's home. COMPANY will provide the resident a voucher(s) sufficient to dispose of Yard Trimmings at the San Martin Transfer Station or a different facility owned by COMPANY without a charge. Upon delivery to the San Martin Transfer Station or different facility owned by COMPANY, resident must provide said voucher and proof of residency where voucher was issued.

(iii) The COMPANY shall not be required to collect, and may leave on the curbside, any container or bundle which is contaminated by or mixed with Hazardous Waste, substantially contaminated by or mixed with non-Recyclable Material or non-Organic Material (for Recyclable Material and Organic Material containers, respectively), or any material that is in such a quantity as to indicate that it was not generated by the average reasonable use of the property. COMPANY shall leave notice with the load explaining why it was not collected.

(iv) Upon request, the COMPANY shall enter into good faith negotiations with the owners or managers of mobile home parks and other commonly-billed developments to institute recycling and organics collection systems that addresses the special needs of these properties. This provision is not intended, however, to require the COMPANY to use specialized equipment or containers at these properties, absent agreement with the mobile home parks or other commonly-billed developments to do so.

(v) COMPANY shall collect household batteries that are contained in zipper plastic bags provided by the customer and placed on top of the container designated for Recyclable Material and used motor oil and filters that are placed in a COMPANY provided, sealed, oil container or COMPANY provided oil filter bag.

(B) COMPANY also agrees, as a part of the consideration for the awarding to it of the right, franchise and privilege for collecting Solid Waste Matter in the City of Morgan Hill, to

collect for CITY, without any charge, Solid Waste Matter from all City Facilities, at the locations and service levels specified in Exhibit G. Upon written notice to COMPANY, CITY may modify the City Facilities receiving service and the service levels for any City Facility from among the available service options set forth on the rate sheet. Notwithstanding the foregoing, COMPANY shall be entitled to compensation for collection services at CITY operated premises that significantly exceed those provided as of the date of this Agreement as EXCEPTIONAL COSTS in the event that such additional CITY services result in COMPANY creating an additional route or adding personnel to service such locations. Compensation for such additional services shall be in an amount equal to the number of additional services provided at the then established rate for the specific additional services.

Upon written direction from CITY, COMPANY will also collect Refuse generated at City-identified homeless encampments or other sites with extraordinary litter or refuse collection needs and provide any carts, bins, and debris boxes necessary for that purpose. The material must be loaded into the COMPANY-provided containers either by CITY personnel or other CITY contractors or discarded into the COMPANY-provided containers by residents of the homeless encampments themselves. COMPANY may recover its then-applicable franchised rates for performing these services as EXCEPTIONAL COSTS under Section 9 in its rates for the year following provision of the services.

All Recyclable Material and Organic Material collected from CITY premises will be sent for processing for diversion from landfill disposal if it is reasonably source separated from other Solid Waste Matter.

CITY staff and contractors serving CITY Facilities may haul and deposit Solid Waste, Construction and Demolition Debris, Recyclable Materials, Yard Trimmings and other Organic Materials generated in the course of routine CITY business (this would not include demolition of buildings or large construction projects) directly to any Transfer Station owned by COMPANY or another corporation affiliated with COMPANY without any charge for as long as the Transfer Station is owned by COMPANY, its current parent corporation, or its successor or assignee. COMPANY also agrees to provide weekly parking lot sweeping services at all CITY premises, buildings, city-owned parking lots, and installations.

(C) Collection of Solid Waste, Recyclable Material and Organic Material shall be at the curbside of the customer's property unless arrangements are made with COMPANY by the customer for on-premises, side yard or backyard pickup and payment of the additional rate for side yard or backyard pickups. COMPANY will collect and process Organic Materials in conformance with the Organic Materials provisions described in detail in Exhibit C to this Agreement.

(D) COMPANY may provide additional services upon request of CITY subject to the establishment of a rate therefor. Provided, however, if COMPANY elects not to provide a proposed new service and so notifies CITY in writing, CITY retains the right to perform the proposed new service itself or to contract with another business entity to provide it, provided that the proposed

new service does not conflict with the exclusive rights granted to COMPANY by this Agreement.

(E) COMPANY shall provide unlimited pickup service for residences with cart service and shall provide vouchers for community cleanup purposes in a form acceptable to CITY twice per year. There shall be no charge to customers or CITY for items brought to the transfer station with a voucher providing the materials brought to the transfer station comply with the limitations established by the voucher. Upon one (1) year notice by CITY, COMPANY shall no longer provide unlimited pickup service for residences and a volume-based (per container) system shall be implemented immediately. If a volume-based system is implemented, COMPANY shall make vouchers (commonly referred to as "extra can stickers") for the temporary expansion of Solid Waste Matter collection service beyond the service level subscribed to by each customer available at two or more locations within the City of Morgan Hill and through the mail. One of these locations must be open a minimum of two (2) hours after 6 p.m. at least one evening per week and four (4) hours on Saturday or Sunday. If a volume-based system is implemented, COMPANY shall provide all residential customers with one (1) free voucher per year as an insert in a bill and that may only be used by Morgan Hill residents. In the event such vouchers are issued, COMPANY may implement a program to verify eligibility for voucher use.

For residential premises with bin service, COMPANY shall establish an "On-Call Bulky Item Collection Program" to collect bulky items and other difficult to collect items. COMPANY shall provide up to the Specified Amount of on-call bulky item collections to each premises per calendar year, at the request of the customer (i.e., the building owner or manager, not a tenant), and at no additional charge to the customer. For residential premises with bin service, the Specified Amount shall equal one-half of the number of units in the premises, rounded up (e.g., 10 collections/year for a 19-unit building). By mutual consent with any residential customer with bin service, COMPANY may replace some or all of the Specified Amount of on-call bulky item collections for such customer with equivalent volume debris box service for the collection of bulky items.

To be eligible for collection, bulky items must be set out by the customer within three feet of the public roadway, or any other location agreed by COMPANY and the customer that can be safely and efficiently accessed by COMPANY'S collection crew and vehicle. In addition, the customer must notify COMPANY, at the time the customer requests the service, what the bulky items will be. Bulky item collection shall be scheduled at a time mutually agreed by COMPANY and the customer during COMPANY'S normal collection hours.

For each bulky item collection, a customer may set out either:

- (a) Up to two cubic yards of solid waste, properly bagged or bundled, or containerized in customer-provided disposable containers.
- (b) Up to two pieces of furniture or appliances (emptied of any contents, if applicable). A mattress/box spring set is eligible for collection as equivalent to one piece of furniture.

COMPANY shall not be required to collect: any individual item that weighs more than two hundred (200) pounds or is more than six feet (6') in length; Construction and Demolition Debris; Hazardous Waste other than electronic waste; motor vehicles or parts; tires; liquids or sludge; dirt, rock, concrete or asphalt; or stumps or large limbs.

COMPANY shall provide information and CITY-approved guidelines on the program to the residential customers, including owners and/or property managers at housing complexes, at least annually. COMPANY shall provide draft guidelines to CITY and solicit CITY approval thirty (30) days prior to planned finalization of guidelines.

Unused bulky item collections shall not roll over to subsequent years. If a customer requests a bulky item collection in excess of the numbers specified above, COMPANY shall provide the service at the normal bulky item collection rate approved by CITY after notifying the customer of the charge.

(F) COMPANY shall provide regular, scheduled collection service for Residential collection of Recyclable Material on a biweekly (once every two weeks) basis on the same day as regular Refuse collection service. COMPANY shall provide a calendar to all residential customers by December 1 of each year indicating the biweekly collection schedule and street sweeping schedule affecting their residence during the following year. Collection from businesses shall be performed on a weekly schedule as arranged by the COMPANY with the participating businesses.

(G) COMPANY shall not alter or adjust collection schedules without providing prior notice of at least (14) days to all service addresses, and any schedule modification shall not result in reduced service frequency to any customer. COMPANY shall collect and remove from any and all premises, within twenty-four (24) hours after demand, notice or request, any and all Solid Waste Matter that COMPANY shall have failed to collect and remove as required at the regular schedule time.

(H) CITY and COMPANY shall mutually agree upon the routes, days and hours for the collection of Solid Waste Matter. Unless so agreed, routes serving residential areas shall not reach the first customer earlier than 6:00 a.m. and must end no later than 7:00 p.m., and collections need only be made Monday-Friday, excluding holidays.

(I) Reserved

(J) CITY desires to purchase compost on behalf of compost customers of COMPANY up to a certain number of tons per calendar year to be determined by CITY on an annual basis. No later than December 1 of each calendar year of the Agreement, CITY shall notify COMPANY in writing of the number of tons of compost that the CITY will commit to purchase on behalf of COMPANY's compost customers during the upcoming calendar year (the "Annual Compost Commitment"). CITY and COMPANY shall mutually agree on a form of documentation that may



be used by eligible customers to request CITY to pay COMPANY for compost tendered to such customer. The form will be published on the CITY website and, provided that CITY has not already met its Annual Compost Commitment, be made available by COMPANY to compost customers desiring to purchase at least forty (40) cubic yards or twenty (20) tons of compost and COMPANY shall inform such customers about the opportunity to have their compost paid for by CITY upon such customers submission and acceptance of the paperwork required by CITY. CITY shall supply COMPANY with documentation authorizing its purchase of compost hereunder prior to COMPANY's tender of compost that is to be paid for by CITY. The compost customer shall be required to pay all transportation and any other costs associated with their purchases. CITY agrees that the price per ton of compost that CITY will pay for compost purchased under this section will be COMPANY's then applicable market rate at the time of the sale and such price will be noted on the documentation approved by CITY that authorizes each sale.

At the end of each calendar year, COMPANY shall calculate the total price of all compost purchased by CITY under this section as set forth on the documentation approved by CITY throughout the year and include that amount as an EXCEPTIONAL COST in its rate application for the year following the sale of the compost. Notwithstanding the foregoing, in the event that COMPANY is unable to recover any amounts owed to COMPANY under this section through a corresponding adjustment to the maximum service rates for any reason, CITY shall pay COMPANY directly for such costs in quarterly installments over a twelve month period beginning on the date that a claim is made by any person, entity, agency, or party that would, if successful, prevent COMPANY from recovering payment for compost sold under this section or if COMPANY is restricted or prevented in any manner from including such costs in its EXCEPTIONAL COSTS or recovering amounts owed through the rates.

Notwithstanding anything else in this Agreement, CITY shall indemnify COMPANY against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments, including attorney's fees, arising out of or relating to CITY's or COMPANY's alleged or actual failure to comply with Article XIIIC or XIID of the California Constitution or SB 1383 with respect to the CITY's or COMPANY's performance under this Section 5(J). In contrast, COMPANY shall have no defense, indemnity or other obligation to CITY with respect to any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments, including attorney's fees, arising out of or relating to CITY's or COMPANY's alleged or actual failure to comply with Article XIIIC or XIID of the California Constitution or SB 1383 with respect to CITY's or COMPANY's performance under this Section 5(J). Nothing in this Agreement shall be deemed an admission by CITY or COMPANY that Articles XIIIC or XIID of the California Constitution apply to any portion of the rates charged by COMPANY under this Agreement and COMPANY does not represent or warrant that the provision of compost under this Agreement shall satisfy any of CITY's obligations under SB 1383.

(K) Provided that CITY has made a written funding request to COMPANY prior to January 31, COMPANY shall pay CITY a solid waste implementation fee in an amount to be set



by CITY, in addition to the franchise fee in an amount to be set by CITY. The proceeds of the solid waste implementation fee shall be used to fund the costs incurred by CITY to provide trash capture and litter abatement requirement activities, SB 1383 enforcement activities, and/or for other related CITY implementation activities as required by Local, Regional, State, or Federal permits, laws, and/or regulations relating to the collection and/or management of trash or solid wastes and the amount of the fee set by CITY shall not exceed the reasonably anticipated costs to be incurred by CITY for the foregoing activities. CITY may change the amount of the solid waste implementation fee from time to time based on its estimated actual costs for providing such activities, provided, however, that COMPANY shall not be required to pay the initial implementation fee or any changed fee until the rate adjustment required by Section 9(C) has taken effect. CITY shall provide COMPANY with a written funding request prior to January 31 of each year for payment requirements to become effective July 1 of the same calendar year and proportional payments will be made by COMPANY to CITY on a quarterly basis and submitted at the same time as the quarterly franchise fee payment. COMPANY may include these solid waste implementation fee funds as EXCEPTIONAL COSTS in its rate application for the year the implementation fee is to be paid by COMPANY to CITY.

(L) COMPANY shall comply with each of the following requirements:

- (i) All collection vehicles and equipment shall be modern and so constructed and maintained to prevent leakage, spillage and overflow. COMPANY shall maintain all vehicles, detachable containers and debris boxes in a clean and sanitary condition and shall perform such maintenance as is necessary to assure that each vehicle and piece of equipment is capable of performing all functions for which it was designed. COMPANY shall maintain an equipment replacement schedule to be provided to CITY upon its request.
  - (a) All trucks and equipment shall be clearly identified with COMPANY name, a current local business telephone number, and a vehicle identification number in letters not less than two and one-half (2-1/2) inches in height.
  - (b) CITY may refuse to permit the operation within the City limits of any vehicle not adequately serviced, cleaned or in need of repair. Removal of vehicles for servicing and repair shall not relieve the COMPANY from maintaining all collection schedules.
- (ii) COMPANY shall not litter premises in the process of making collections nor allow Solid Waste Matter to blow or fall from any vehicles used for collections. COMPANY shall replace lids or covers on containers immediately after emptying the same and shall repair or replace at its expense any containers damaged as a result of its handling thereof, normal wear and tear excepted. COMPANY shall clean up all spills including oil and debris on the streets resulting from its operation.

- (iii) COMPANY shall establish and maintain an office where complaints may be made. Such office shall have a responsible individual available daily between the hours of eight o'clock a.m. and five o'clock p.m., excepting Saturday, Sunday and such holidays as are recognized by COMPANY and approved by CITY. The following holidays have been approved by City: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day. Calls for missed collections shall be received twenty-four (24) hours per day.
- (iv) CITY agrees to require all customers to place their Refuse in metal containers or wheeled carts provided by the COMPANY. COMPANY shall offer residents their choice of 32-gallon, 48-gallon, 64-gallon, and 96-gallon carts for Refuse collection. Customers may place any excess Refuse that does not fit into their cart or container in plastic bags alongside their cart or container. No container provided by the customer shall exceed 32 gallons in size and 70 pounds in weight when full, and COMPANY shall not be required to pick up materials that are not placed in containers as above specified. COMPANY shall provide all residential customers with one 48gallon wheeled cart for Refuse collection at no additional charge. At the customer's request, smaller containers may be provided if COMPANY opts to provide smaller containers.
- (v) COMPANY shall provide residents with appropriate recycling containers reasonably acceptable to CITY for the collection of Recyclable Materials. At all times the containers shall be the property of the COMPANY. CITY and COMPANY agree that all curbside containers provided by the CITY prior to the effective date of this AGREEMENT shall be the property of the COMPANY. COMPANY shall make a reasonable effort to maintain or replace damaged or lost recycling containers and to ensure that new customers are provided recycling containers within one week of commencing service.

COMPANY shall offer residents their choice of containers including bins, 32-gallon carts and 64-gallon carts for Recyclable Material and 64-gallon and 96-gallon carts for Organic Material. Residents that do not typically set out Yard Trimmings will also be offered a 32-gallon cart for Organic Material. The initial mix of containers offered to residents by the COMPANY shall include one cart for Recyclable Material and one cart for Organic Material, in addition to the cart for Solid Waste. Upon customer request, COMPANY shall provide and deliver indoor food waste collection containers to residential customers. COMPANY shall assist customers in locking organic collection containers upon request.

COMPANY shall provide additional containers to any resident requesting additional containers for Recyclable Material or Organic Material collection service provided the request is consistent with the amount of Recyclable Material

or Organic Material potentially generated at the residence.

COMPANY shall provide businesses with recycling containers adequately sized to contain cardboard for recycling and reasonably acceptable to CITY for the collection of Recyclable Material. At all times the containers shall be the property of the COMPANY.

- (vi) COMPANY shall replace all Solid Waste, Recyclable Material, and Organic Material containers used by its customers in an upright position, in approximately the same location where the containers were immediately before COMPANY emptied them and use best efforts to replace containers with lids closed. COMPANY shall return all commercial bins to the location where the containers were immediately before COMPANY emptied them, within any enclosures provided and shall make reasonable efforts to close bin lids and shall close any doors or gates provided for screening the bins. COMPANY shall instruct its employees to comply with the foregoing requirements and shall exercise sufficient supervision of its employees to assure that these instructions are followed.
- (vii) COMPANY shall not collect Yard Trimmings during the collection of Solid Waste unless the Yard Trimmings are not reasonably visible to the COMPANY employee. COMPANY shall make reasonable efforts to not collect corrugated cardboard during the collection of residential garbage unless the cardboard is not reasonably visible to the COMPANY employee. If, prior to servicing the container, yard trimmings or cardboard become visible to a COMPANY employee, said employee shall not empty that container. COMPANY employees shall leave a CITY-approved explanatory notice on all garbage containers not emptied because they contained yard trimmings or cardboard. If a customer requests that the COMPANY return to an address to collect garbage that has had Yard Trimmings or cardboard removed from it and is now collectable, COMPANY shall return within 24 hours after the customer has agreed to pay the extra collection fee contained in Exhibit A, Schedule of Rates.
- (viii) COMPANY shall be responsible for transporting Solid Waste, Construction and Demolition Debris, Recyclable Material and Organic Material collected under this Agreement to designated processing facilities. As of the date of this Agreement, the current designated processing facilities are identified on Exhibit D. COMPANY and CITY acknowledge that the designated facilities are subject to change throughout the term of this agreement based on external factors and market conditions.
- (ix) COMPANY will make reasonable efforts to ensure that all Recyclable Material are not disposed of in landfills.

- (x) When recyclables are not collected from any customer for any reason including the presence or suspected presence of Hazardous Waste or contaminants, COMPANY shall notify its customer in writing why the collection was not made. COMPANY has represented to CITY that COMPANY will carry out its duties to notify all agencies with jurisdiction, including the California Department of Toxic Substance Control and Local Emergency Response Providers, and if appropriate, the National Response Center, of reportable quantities of Hazardous Waste, found or observed in solid waste anywhere within the CITY, including on, in, under or about CITY property, including streets, easements, rights of way and city waste containers. In addition to other required notifications, if COMPANY observes any substance which it or its employees reasonably believe or suspect to contain Hazardous Waste unlawfully disposed of or released on CITY property, including streets, storm drains, or public right of way, COMPANY also will immediately notify the City Manager, or the City Manager's designee.
- (xi) COMPANY shall satisfactorily provide comprehensive customer service for waste diversion programs, including but not limited to responding to complaints, answering questions and handling missed pick-ups. Missed pick-ups shall be collected within one business day of being reported. A record of customer complaints and disposition shall be maintained by COMPANY and made available to CITY at CITY's request.
- (xii). COMPANY shall develop and implement an outreach and education program as set forth on Exhibit E and shall also provide supplemental education and outreach related to Organic Material collection as set forth in Exhibit C. Upon mutual agreement, COMPANY may also provide additional assistance in conducting the public awareness/education program. Such assistance may include but is not limited to: 1) providing assistance in developing educational and promotional programs and materials; 2) distributing educational and promotional materials; 3) providing recycling vehicle(s) and personnel for appearances at special events such as parades, fairs, etc.; and 4) distributing an annual calendar for recycling collection and street sweeping. CITY may, at its discretion, require substantial and extraordinary additional education and outreach activities to be provided by COMPANY beyond those described above. COMPANY may recover its reasonable and necessary costs for performing these activities as EXCEPTIONAL COSTS in its rate application for the year following provision of the services.
- (xiii) Within thirty (30) days after the end of each month, COMPANY shall submit to CITY written monthly reports, in a format reasonably acceptable to the CITY, that provide the following information:
  - a. Collected Tonnages - a monthly summary of the quantity, by weight, of each recyclable material collected.

- b. Participation Rates - a monthly reasonably estimated summary of the total number of households served per route, the actual number of households participating, the number of pickups per route, the percentage of pickups by route, and the number of businesses participating in the cardboard recycling program.
  - c. Recycling Costs and Revenues - a monthly summary of the total dollar amount received in revenue or paid out in processing cost for Recyclable Materials collected
- (xiv) Equipment Maintenance - COMPANY shall maintain all equipment in a clean condition and in good repair at all times. All parts and systems of the equipment shall operate properly and be maintained in a condition reasonably satisfactory to CITY. COMPANY shall repaint all equipment on a frequency necessary to maintain a positive public image as reasonably determined by the CITY.
  - (xv) Bins and carts for Garbage, Recyclable Material and Organic Material shall be delivered to the customer within five (5) working days of the request for service by the customer.
  - (xvi) Care shall be taken by the COMPANY's employees to prevent damage to bins and carts by unnecessary rough handling. Bins and carts damaged by the COMPANY's employees shall be replaced by the COMPANY, at COMPANY's sole expense, within five (5) working days of the request by the customer or by the CITY.
  - (xvii) Change in bin size. COMPANY shall within five (5) working days of request by customer, exchange bins for a larger or smaller size bin. Customer may request a change in bin size twice a year at no additional charge. Additional bin exchanges shall be subject to a handling fee.
  - (xviii) Bin Cleaning. COMPANY shall within five (5) working days of request by customer, exchange bins to provide a clean bin. Customer may request a clean bin once a year at no additional charge. Additional bin exchanges shall be subject to a handling fee.

**Section 7. Performance Standards and Liquidated Damages**

(A) **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by COMPANY of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or



denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) exclusive services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

**(B) Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable Collection Services, as described in detail in Section 6 of this Agreement, are of utmost importance to City and that CITY has considered and relied on COMPANY's representations as to its quality-of-service commitment in awarding the Agreement to it. The Parties 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 COMPANY fails to achieve the performance standards or fails to submit required documents in a timely manner, CITY and its 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 that CITY will suffer. Therefore, without prejudice to CITY's right to treat such non-performance as an event of default, the Parties agree that the Liquidated Damages amounts established in this Agreement represent a reasonable estimate 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 CITY that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Before assessing Liquidated Damages, CITY shall give COMPANY notice of its intention to do so. The notice will include a brief description of the incident(s) and non-performance. CITY may review (and make copies at its own expense) all information in the possession of COMPANY relating to incident(s) and/or non-performance. COMPANY may, within ten (10) Business Days after receipt of notice, request a meeting with CITY. CITY may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. CITY Contract Manager will provide COMPANY with a written explanation of their determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 6.

Should such notices of CITY intention to assess Liquidated Damages exceed \$10,000 in total during any 120-day period, COMPANY may within ten (10) Working Days of receipt of such notice representing the amount exceeding \$10,000 for such period request the opportunity to meet with the City Manager or their designee to respond to the intended assessment. If COMPANY has made such request within the required timeframe, the intended assessment of Liquidated Damages will not be imposed on COMPANY until COMPANY has been afforded the opportunity to meet with the City Manager or their designee to respond to the intended assessment. In such case, the decision of the City Manager or their designee shall be final and COMPANY shall not be subject

to, or required to exhaust, any further administrative remedies. If the City Manager or their designee is acting as the City Contract Manager, the City Manager or their designee shall designate an alternative City representative to meet with COMPANY. Should COMPANY not exercise its right to respond to the assessment as described in this paragraph, and in all other cases, the decision of City Contract Manager shall be final and COMPANY shall not be subject to, or required to exhaust, any further administrative remedies. COMPANY shall pay CITY the amount assessed within 30 days of receipt of the original assessment or the Director's decision, whichever is later.

Notwithstanding the foregoing or anything else in this Agreement, COMPANY shall not be required to pay Liquidated Damages in excess of the then applicable Annual Liquidated Damages Maximum during each twelve-month period beginning July 1 and ending June 30 of each agreement year. The initial Annual Liquidated Damages Maximum shall be equal to \$30,000. The Annual Liquidated Damages Maximum shall be increased or decreased throughout the Term as follows:

- i) The Annual Liquidated Damages Maximum shall be increased from \$30,000 to \$60,000 effective the year following any year that the Annual Liquidated Damages Maximum was \$30,000 during such year and COMPANY was assessed Liquidated Damages of \$30,000 or more during such year and such assessment was determined to be justified after a meeting between COMPANY and CITY Manager;
- ii) The Annual Liquidated Damages Maximum shall be increased to \$90,000 effective the year following any year that the Annual Liquidated Damages Maximum was \$60,000 during such year and COMPANY was assessed Liquidated Damages of \$60,000 or more during such year and such assessment was determined to be justified after a meeting between COMPANY and CITY Manager;
- iii) The Annual Liquidated Damages Maximum shall be decreased to \$60,000 effective the year following any year that the Annual Liquidated Damages Maximum was \$90,000 and COMPANY was assessed Liquidated Damages of less than \$60,000; and
- iv) The Annual Liquidated Damages Maximum shall be decreased to \$30,000 effective the year following any year that the Annual Liquidated Damages Maximum was \$60,000 and COMPANY was assessed Liquidated Damages of less than \$30,000.

For the avoidance of doubt, Liquidated Damages in excess of the applicable Annual Liquidated Damages Maximum shall not be carried over to subsequent years. The Annual Liquidated Damages Maximum shall remain the same from year to year unless and until one of the events in (i) through (iv) above trigger a modification to such amount. In the event that CITY conducts a Performance Audit during any year that the Annual Liquidated Damages Maximum is \$90,000, such Performance Audit will not be considered an EXCEPTIONAL COST and COMPANY shall be responsible for the cost of such Performance Audit up to a maximum of \$50,000.

(C) **Amount.** City may assess \$300 Liquidated Damages for each calendar day or

event, as appropriate, for which COMPANY is determined to have failed to meet the performance standards described and listed in Section 6(L)(i) through 6(L)(xviii). In calculating the total assessment, each customer experiencing the substandard service shall count as a separate instance or event. It is agreed and understood that any time period for performance of duties stated in Section 6(L)(i) to (xviii) is a material provision of this Agreement.

**Section 8. Franchise Representative and Inspections**

(A) COMPANY shall assign a qualified person to be in charge of its operations in the CITY and shall inform CITY of such person's identity and experience, and provide direct contact information for such person, without an intermediary person, including e-mail address and telephone number. It shall be such person's responsibility to assure that all collection operations are effectively performed and all complaints courteously handled and satisfactorily resolved.

(B) To ensure that the laws governing the performance of this Agreement are complied with, a representative of CITY may inspect, review and observe the operations of COMPANY during the term of this Agreement without prior notice. At CITY's request, COMPANY shall make designated personnel available to accompany CITY inspectors provided a minimum of twenty-four (24) hour notice has been given to COMPANY by CITY.

**Section 9. Franchise Collection Rates**

(A) COMPANY shall not charge any amount in excess of the approved schedule of service rates for any services required or permitted to be performed by the terms of this Agreement. The approved service rates are those set forth in Exhibit A attached hereto and incorporated herein by reference, as such Schedule of Rates may hereafter be adjusted as provided herein.

(B) COMPANY shall submit a request for an adjustment of service rates no later than March 1 of any given year if an annual adjustment under this subsection (B) is desired by the COMPANY. Any approved change in service rates under this subsection shall become effective on July 1 of the same calendar year. For purposes of adjustment, the base rates shall be the rates in effect on January 1, in the calendar year the adjustment is made.

The annual adjustment under this subsection shall be calculated using the formula set forth in Exhibit A2.

(C) In addition to the adjustment provided for in Section 9(B) herein, the parties agree that service rates shall be adjusted in an amount sufficient to cover COMPANY'S Reasonable Increased Costs resulting from any extraordinary changes in circumstances that increase the COMPANY's costs of providing service hereunder and that are substantially beyond the control of the COMPANY (including, without limitation, revisions to laws, ordinances, regulations, or other Applicable Law, or the interpretation or enforcement thereof; any change in governmental or regulatory fees; and the unavailability for reasons beyond COMPANY's control of any facility

to which COMPANY delivers material).

The parties furthermore agree to adjust the service rates in a mutually agreed manner to cover COMPANY's Reasonable Increased Costs of the following, which adjustment shall be a condition to COMPANY implementing the following:

- (i) City's direction of CONTRACTOR to implement volume-based rates for residential collection;
- (ii) Following prior written approval by City of a COMPANY proposal, costs of testing and implementing alternative collection vehicle fueling strategies such as electricity, hydrogen and hybrid propulsion, as described in Recital I; and
- (iii) Changes in the franchise fee, implementation fee, or any other fee payable to CITY pursuant to this Agreement.

In addition to the above changes in the service rates, COMPANY shall also be entitled to temporary one-year adjustments in the service rates to recover the Reasonable Increased Costs for additional temporary services provided by COMPANY upon written request by CITY (EXCEPTIONAL COSTS). The temporary adjustment will not be included in the base rate used to calculate the following year's rate adjustment request. EXCEPTIONAL COSTS shall include, but are not limited to, the reasonable and necessary costs associated with:

- a. A performance audit required by CITY pursuant to Section 2(B) unless the performance audit is conducted during any year that the Annual Liquidated Damages Maximum is \$90,000. In the event that a Performance Audit is conducted during any year that the Annual Liquidated Damages Maximum is \$90,000, the first \$50,000 in performance audit costs are excluded from the calculation of EXCEPTIONAL COSTS;
- b. Cleanups of homeless encampments and other sites pursuant to Section 6(B);
- c. Special on-call collections conducted upon written request by CITY, provided that such collections are not made for the personal benefit of a public official or appointed city employee;
- d. Additional vouchers provided to residents, institutions, or businesses at City's request for free disposal at the San Martin Transfer Station;
- e. Additional temporary public education services beyond those otherwise required by Exhibits C and E as set forth in Section 6(L)(xii);
- f. Additional city services that qualify for additional compensation as described in Section 6(B);
- g. Compost provided or delivered by COMPANY as described in Section 6(J); and

- h. Any other temporary services requested by CITY the costs of which the parties mutually agree shall be treated as EXCEPTIONAL COSTS.

(D) Upon confirmation by CITY that COMPANY has submitted an accurate and correctly calculated request for an adjustment of service rates, CITY shall approve new maximum service rates and shall notify COMPANY of such maximum service rates on or before May 1 of the year the adjustment is made. COMPANY may charge service rates that are less than or equal to the maximum service rates approved by CITY.

Should an index named in Exhibit A2 not be published in October of any given year, the calculations shall be performed using the most recent index values of a month immediately preceding the October contemplated by this Amendment.

(E) COMPANY agrees to provide eligible low-income residents with a 20% discount for residential service provided that:

- (i) The resident applying for the discount can prove that they are eligible to receive the "lifeline" discount rate offered by Pacific, Gas & Electric. COMPANY may require reverification of eligibility annually. In the event that this utility discount is no longer offered, the COMPANY and the CITY shall meet to agree upon a replacement measure of eligibility. A change in the eligibility requirements for PG&E's "lifeline" discount rate shall be treated as a change in Applicable Law under subsection (C) above; and
- (ii) The resident subscribes to single-can garbage service if a volume-based system is implemented.

**Section 10. Company Providing Criteria to Review Development Plans.**

If requested by CITY, COMPANY shall provide CITY with examples of specific criteria by which development plans for residential and nonresidential units may be reviewed by CITY concerning the location of Solid Waste Matter containers and appropriate screening thereof, which criteria CITY may choose to utilize in the review of development plans.

**Section 11. Franchise Service Termination.**

COMPANY may terminate service to residential customers who are one hundred twenty (120) days in arrears in payment of rate charges and nonresidential customers who are sixty (60) days in arrears in payment of rate charges, respectively, provided COMPANY:

- (A) Shall give a customer whose service may be cut off at least (30) days written notice prior to the proposed service termination date.



(B) Shall notify CITY in advance of each proposed service termination by property location.

(C) Shall monitor each property location at which service has been terminated and notify CITY of any problems observed, including accumulation of garbage on the premises.

(D) Shall promptly restore service when all amounts owing have been paid.

**Section 12. Franchise Disaster Assistance**

(A) In the event a wartime, natural, physical or other disaster in or proximate to the CITY limits resulting in the declaration of a State of Emergency by the duly authorized authority or City Council, COMPANY shall make available to CITY, all trucks, equipment and personnel normally performing services under this Agreement, for emergency operations conducted or directed by the CITY emergency organization, provided that CITY and COMPANY mutually agree it is safe and practicable to do so.

(B) Upon consent from COMPANY, such consent which shall not be unreasonably withheld based on the circumstances giving rise to the State of Emergency, CITY shall have the right to take temporary possession of all such equipment provided by COMPANY, and to temporarily employ all COMPANY personnel who voluntarily agree to serve as emergency operation forces of CITY, under the direction and control of the CITY Emergency Services Director.

(C) COMPANY shall use efforts to make available, in addition to the equipment and personnel above, equipment and personnel from those COMPANY operations and resources not serving CITY, to the extent necessary to conduct effective refuse, waste and debris removal during any declared State of Emergency to the specifications of the CITY Emergency Services Director.

(D) CITY shall not be required to compensate COMPANY in any manner or form for COMPANY provision of vehicles, personnel or equipment that conforms with the regular level of service provided under this Agreement within the CITY limits, when made available during a declared State of Emergency. When additional vehicles, personnel hours or equipment are provided during an emergency that exceed the level of service provided under this Agreement, CITY shall compensate COMPANY for actual expenses incurred by COMPANY in providing additional vehicles, personnel hours or equipment upon submission by COMPANY to CITY of detailed records of costs and expenses actually borne by COMPANY, and upon approval by the Federal government of CITY as reimbursement of expenses incurred by COMPANY during a disaster.

**Section 13. Franchise Indemnification**

(A). Indemnification of CITY. COMPANY agrees that it shall protect, defend with counsel reasonably acceptable to CITY, indemnify and hold harmless CITY, its officers, employees, and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments, including attorney's fees, arising out of or resulting in any way from COMPANY's performance of this franchise, unless such claim is due to the negligence or willful acts of the CITY, its officers, employees, agents, contractors or volunteers. Upon demand of the CITY, made by and through the City Attorney, COMPANY shall appear in and defend the CITY and its officers, employees, and agents, in any claims or actions, whether judicial, administrative or otherwise which are within the scope of the foregoing indemnity. **THIS PROVISION SHALL SURVIVE THE EXPIRATION OF THE PERIOD DURING WHICH SOLID WASTE AND RECYCLABLES COLLECTION, PROCESSING AND DISPOSAL SERVICES ARE TO BE PROVIDED UNDER THIS AGREEMENT.**

(B) Hazardous Substance Indemnification. COMPANY shall indemnify, defend with counsel reasonably acceptable to CITY, protect and hold harmless CITY, its officers, employees, agents, volunteers, assigns and any successor or successors to CITY's interest from and against all claims, actual damages (including special and consequential damages but excluding punitive damages), natural resources damage, injuries, cost, response, remediation and removal costs, losses, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties 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 in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, CITY or its officers, employees, or agents arising from or attributable to 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 any Hazardous Substance or Hazardous Wastes at any place owned by COMPANY or its affiliates where COMPANY processes or stores material for recycling pursuant to this Agreement, unless such claim is due to the sole negligence or willful acts of the CITY, its officers, employees, agents, contractors or volunteers. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify CITY from liability. **THIS PROVISION SHALL SURVIVE THE EXPIRATION OF THE PERIOD DURING WHICH SOLID WASTE AND RECYCLABLES COLLECTION, PROCESSING AND DISPOSAL SERVICES ARE TO BE PROVIDED UNDER THIS AGREEMENT.**

(C) State Mandate Indemnification. COMPANY agrees to protect, defend, with counsel reasonably acceptable to CITY, and indemnify CITY against fines or penalties imposed by CalRecycle in the event that the CITY fails to meet its AB 939 waste reduction goals or fulfill its obligations pursuant to the SB 1383 Final Regulations due to the COMPANY's failure to satisfactorily fulfill its obligations pursuant to this Agreement, unless such claim is due to the sole negligence or willful acts of the CITY, its officers, employees, agents, contractors or volunteers.

**Section 14. Franchise Insurance and Bond.**

(A) This Agreement and the privileges herein granted to COMPANY is and are conditioned upon the faithful performance by COMPANY and by each and every one of his subcontractors, if any, of each and all of the covenants and provisions herein agreed to be performed by COMPANY or required to be performed by its subcontractors; and payment of all license fees and other monies herein agreed to be paid by COMPANY.

(B) Upon execution of this Agreement, COMPANY shall furnish to CITY and shall file with the City Clerk of CITY a corporate surety bond, in substantially the form of the bond filed with CITY in 2021 (or in such other form as may be approved by the City Manager and approved as to form by the City Attorney) executed by COMPANY as principal and by a corporate surety as surety, in the sum of \$1,000,000 (One Million Dollars), conditioned upon the faithful performance by COMPANY and its subcontractors, if any, of this Agreement.

(C) COMPANY agrees to maintain and submit evidence to CITY of, during the life of this Agreement, insurance policies as specified in Exhibit B, Insurance Requirements.

Evidence of insurance shall be in the form of an ACORD form Certificate of Insurance and original endorsements to policies each naming the CITY and its officers, employees and agents as additional insureds on all policies. In the event of cancellation of any coverage, thirty (30) days prior written notice of termination shall be given to the CITY. Notice shall be sent to:

City Manager  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, California 95037

**Section 15. Franchise Assignment**

(A) COMPANY shall not assign, sell, subcontract or otherwise delegate authority to perform any portion of this Agreement, including but not limited to a sale, exchange or other transfer of substantially all of COMPANY's assets dedicated to service under this Agreement to a third party, or between a subsidiary and a parent company or Related Party, without the prior written express approval of CITY. Use of third-party disposal or processing facilities shall not be deemed subcontracting or delegation of authority. In the event of any assignment duly authorized by CITY, the assignee shall assume the liability of COMPANY.

(B) No sale, gift, or transfer of stock or other interest of COMPANY, including but not limited to any reorganization, consolidation, merger recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which COMPANY or any of its shareholders is a party, which would result in a change of Control of COMPANY, shall be made without prior written approval of the City Council. Violation of this

provision shall be a breach of this Agreement and grounds for termination by CITY without the need for compliance with the notification requirements of Section 20.

(C) If COMPANY shall at any time during the Term become insolvent, or if proceedings in bankruptcy shall be instituted by or against COMPANY (and, if against COMPANY, not dismissed or stayed within 90 days), or if COMPANY shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of COMPANY shall be appointed in any suit or proceeding brought by or against COMPANY, or if COMPANY shall make an assignment for the benefit of creditors, then and in each and every such case, this Agreement shall immediately cease, terminate, and be canceled upon written notice by CITY and without the necessity of suit or other proceeding.

(D) If COMPANY requests CITY's consideration of and consent to an assignment, CITY may deny or approve such request in its complete discretion. CITY need not consider any request by COMPANY for consent to an assignment unless and until COMPANY has met the following requirements:

- (i) COMPANY shall pay to CITY the transfer fee described in Section 15 (E).
- (ii) COMPANY shall furnish CITY with audited financial statements of the proposed assignee's operations for the immediately preceding five (5) operating years.

(iii) COMPANY shall furnish CITY with satisfactory proof that the proposed assignee has the demonstrated technical capability to perform all Collection Services, including: (a) that the proposed assignee has at least 10 years of experience in the provision and management of Solid Waste and Recyclables Collection Services on a scale equal to or exceeding the scale of operations conducted by COMPANY under this Agreement; (b) in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any State, federal or local agencies and the assignee has provided CITY with a complete list of such citations and censures; (c) the proposed assignee has at all times conducted its operations in a environmentally safe and conscientious fashion; (d) the proposed assignee conducts its Solid Waste and Recyclables Collection Services in accordance with sound Solid Waste and Recyclables practices, and in full compliance with all federal, State and local laws regulating the collection and Disposal of Solid Waste including hazardous substances; and (e) any other information required by CITY to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

(E) Any application for an assignment transfer shall be made in a manner prescribed by the City Manager. The application shall include a nonrefundable transfer fee in the amount of Fifty Thousand Dollars (\$50,000) to cover the cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse CITY for all direct and indirect expenses. In addition, COMPANY shall reimburse CITY for any and all additional costs related to the assignment requested and not covered by the transfer fee. Bills shall be supported with evidence of the expense or cost incurred. COMPANY shall pay such bills within (30) days of receipt. The transfer fees are over and above any



COMPANY Fees specified in this Agreement.

(F) If CITY consents to an assignment, COMPANY shall cooperate with CITY and the assignee to assist in an orderly transition.

**Section 16. Franchise Waste**

It is expressly understood that all Solid Waste, Recyclable Material, Organic Material, and Construction and Demolition Debris collected under this Agreement becomes the property of COMPANY at the point in time it is loaded onto COMPANY'S vehicle, subject to the requirement of delivery of Solid Waste to a disposal site, Recyclable Material to a recycling facility, and Organic Material to an organic waste facility, and Construction and Demolition Debris to an appropriate disposal or processing facility. However, title to Hazardous Waste shall not pass to COMPANY pursuant to Section 6(A)(v) or 6(E) of this Agreement and shall remain with the generator, unless purposefully collected by COMPANY pursuant to one of the Hazardous Waste collection programs provided for in this Agreement. At no time does CITY obtain any right of ownership or possession of solid waste or recyclables placed for collection, and nothing in this Agreement shall be construed as giving rise to any inference that CITY has any such rights. CITY and COMPANY agree that, for the purposes of the Uniform Commercial Code and all other laws imposing liability for defective products, it is COMPANY, and not CITY that is to be considered the "merchant" of goods recycled pursuant to this AGREEMENT.

COMPANY shall ensure that all disposal, transfer, Recyclable Material processing, and Organic Material processing and Construction and Demolition Debris processing and/or disposal facilities owned and used by the COMPANY or other corporations affiliated with COMPANY in the performance of this Agreement are properly permitted and in material compliance with Applicable Law at all times during the Term. COMPANY shall immediately inform the City Manager in writing in the event of any material noncompliance with Applicable Law by such facility, and CITY, in its sole discretion, shall have the right to require the use of a different facility, to be selected by COMPANY. The City Council may also, in its sole discretion, require the use of a different site at any time during the Term if any such facility (as the case may be) is found to not be in material compliance with the provisions of this Section, and the City Council determines that such facility (as the case may be) is not acceptable due to a failure to comply with the terms of this Section or a finding by State or federal regulatory agencies that it is not in material compliance with Applicable Law, including the Environmental Statutes, and is unable to accept City's Solid Waste, Construction and Demolition Debris, Organic Material or Recyclable Material (as the case may be).

COMPANY's written arrangements with its customers for collection of Recyclable Material or Organic Material within CITY (if any) will provide that, subject to the right of the customers to claim lost property, title and the right to possession, and liability for all recyclables which are set out for collection on the regularly scheduled collection day shall pass to COMPANY at the time they are placed in the COMPANY's truck. The COMPANY shall have the right to



retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of or use the recyclables that it collects. At no time does the CITY obtain any right of ownership or possession of recyclables placed for collection, and nothing in this Agreement shall be construed as giving rise to any inference that CITY has any such rights. COMPANY will utilize their best efforts to implement and maintain waste recovery or recycling programs. COMPANY shall have the first right and option and right of first refusal for the recycling of any type of material within the CITY subject to applicable laws. However, if COMPANY chooses not to recycle a type of material which CITY deems recyclable, CITY may, at its option, cause or implement independent recycling programs to handle said waste, provided that the proposed program does not conflict with the exclusive rights granted to COMPANY by this Agreement.

**Section 17. Franchise Waiver**

The waiver by CITY of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance or law shall not be deemed to be a permanent waiver of such term, covenant, condition, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law. The subsequent acceptance by CITY of any franchise or other fee or of any other monies which may become due hereunder to CITY shall not be deemed to be a waiver of any preceding breach of violation by COMPANY of any term, covenant or condition of this Agreement or of any applicable law or ordinance.

**Section 18. Franchise Administration**

The administration and enforcement of this Agreement shall be the responsibility of the City Manager or designated representatives of that office.

**Section 19. Franchise Independent Contractor Status**

It is agreed that COMPANY is an independent contractor, and all persons working for or under the direction of the COMPANY are the COMPANY's agents, servants, employees, and said persons shall not be deemed agents, servants or employees of CITY.

**Section 20. Franchise Notice**

All notices shall be personally delivered or mailed, via first class mail or nationally recognized overnight courier, to the below listed addresses. These addresses shall be used for delivery of service of process. Notices so sent shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of COMPANY is as follows:

RECOLOGY SOUTH VALLEY

1351 Pacheco Pass Highway  
Gilroy, CA 95020

with a copy to:  
Recology South Valley  
Attn: Legal Department  
50 California Street, 24th Floor  
San Francisco, CA 94111

Address of CITY is as follows:

City Manager  
City of Morgan Hill  
17575 Peak Ave.  
Morgan Hill, CA 95037

with a copy to:  
City Clerk  
17575 Peak Avenue  
Morgan Hill, CA 95037

## **Section 21. Continuity of Services**

None of the following are to be considered an excuse from performance, and COMPANY shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events: (a) general economic conditions, interest or inflation rates, or currency fluctuation or changes in the cost of fuel, commodities, supplies or equipment; (b) changes in the financial condition of COMPANY or any of its subcontractors affecting their ability to perform their obligations; (c) the consequences of errors, neglect or omissions by COMPANY, or any subcontractor; (d) failure of any subcontractor or supplier to furnish labor, materials, service or equipment; (e) equipment failure; (f) changes in market prices for, or the unavailability of markets for, the sale or purchase of Recyclables; (g) the availability of any Disposal site or Processing facility; (h) labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by COMPANY's, employees or directed at COMPANY, or a subcontractor. In the case of labor unrest or job action directed at a third party over whom COMPANY has no control, however, the inability of COMPANY to make collections due to the unwillingness or failure of the third party to provide reasonable assurance of the safety of COMPANY's employees while making collections or to make reasonable accommodations regarding 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 COMPANY's cooperation in making collection at different times and in different locations.

In addition to any and all other legal or equitable remedies, in the event that COMPANY, for any reason whatsoever, fails, refuses or is unable to perform any Collection Service at the time and in the manner provided in this Agreement, and if, as a result thereof, Solid Waste accumulates

in the City to such an extent, in such a manner, or for such a time that the City Manager finds that such accumulation endangers or menaces the environment, public health, safety or welfare, then CITY shall have the right, but not the obligation, upon twenty-four (24) hours prior notice to COMPANY, to do either one or both of the following during the period of such emergency as determined by City Manager: (i) cause to be performed such services with other personnel without liability to COMPANY; (ii) to take possession of any or all of COMPANY's land, equipment and other property used or useful in providing one or more of the Collection Services and to provide one or more of the Collection Services. Should CITY take possession of COMPANY's equipment and other property pursuant to this Section, CITY shall exercise reasonable, ordinary care in the use of the equipment and property. Any action by CITY pursuant to this Section shall be without payment to COMPANY.

Notice of COMPANY's failure, refusal or neglect to perform one or more Collection Services that meets the requirements of the previous paragraph may be given orally by telephone to COMPANY at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to COMPANY within twenty-four (24) hours of the oral notification. COMPANY further agrees that in such event:

(a) It shall fully cooperate with CITY to affect the transfer of possession of property to CITY for CITY's use.

(b) It shall, if CITY so requests and to the extent feasible, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain the property in operational condition. If CITY takes possession of COMPANY'S equipment and causes the equipment to be operated in the performance of any one or more Collection Services, as herein contemplated, CITY shall ensure that operators of the equipment are experienced, knowledgeable, and licensed to operate the equipment taken possession of by CITY. CITY shall indemnify, defend, and hold COMPANY harmless from any and all liability, claims, damages, suits, costs, and expenses that arise out of or in any way relate to CITY's use of COMPANY'S equipment or property except from liability, claims, damages, suits, costs, and expenses that are the result of defects in COMPANY'S equipment or property. Further, as a condition precedent to exercising any rights described herein, CITY shall provide COMPANY with evidence of insurance reasonably satisfactory to COMPANY that would cover CITY'S conduct of any one or more Collection Services that CITY undertakes pursuant to this section. Such insurance shall include general liability, automobile liability, and workers compensation insurance and each policy maintained by the CITY shall name COMPANY as additional insured. CITY shall also provide maintenance of equipment and property in accordance with standard industry practices during the period of its use and shall return equipment and property to COMPANY in substantially the same condition and repair as on the date CITY took possession, normal wear and tear expected.

CITY's exercise of its contractual rights under this Section does not constitute a taking of private property for which compensation must be paid; (ii) shall not create any liability on the part of CITY to COMPANY; and (iii) does not exempt COMPANY from the indemnity

provisions of Section 12, which are meant to extend to circumstances arising under this Article, provided that COMPANY is not required to indemnify CITY against claims and damages that are solely caused by the established active negligence or willful misconduct of City officers, employees, agents, or volunteers acting under this Section. CITY shall not affect a permanent taking of COMPANY's property pursuant to this Section.

CITY's right to retain temporary possession of COMPANY's property, and to provide one or more Collection Services shall continue until COMPANY can demonstrate to CITY's satisfaction that it is ready, willing and able to resume such services. CITY has no obligation to maintain possession of COMPANY's property or continue its use in performing one or more Collection Services for any period of time and may, at any time, in its sole discretion, relinquish possession to COMPANY.

Separate from or in addition to assessing liquidated damages, CITY may also at its sole discretion promptly secure, or direct COMPANY to promptly secure, at COMPANY's sole expense, substitute services, satisfactory to CITY, for when COMPANY is in breach, upon the same terms and conditions as provided in this Agreement.

## **Section 22. Franchise Termination**

(A) All terms and specifications of this Agreement are material and binding, and failure to perform any portion of the work described herein shall be considered a breach of this Agreement. Failure or delay by either party to perform any term or provision of this Agreement constitutes a breach under this Agreement. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

(B) Except as set forth in Sections 2(B) and 15 (B) and (C), neither party may exercise any rights or remedies upon a default by the other party, unless and until such default continues for a period of seven (7) days after written notice thereof from the non-defaulting party. If the nature of the default is such that more than seven (7) days are reasonably required for its cure, then the defaulting party shall not be deemed to be in default if it has commenced a cure within the seven (7) day period and thereafter diligently prosecutes such cure to completion within thirty (30) days after receipt of written notice thereof unless CITY and COMPANY mutually agree that curing the default will take longer than thirty (30) days and mutually determine a reasonable longer deadline. No such additional time to cure shall be allowed for failure to pay any amount due to either party under this Agreement, or if the nature of the default is such that the health, welfare, or safety of the public is endangered as determined by the City Manager. The notice of default shall specify the default complained of by the injured party. In the event of any conflict between the cure periods set forth in this subsection and any shorter cure periods set forth in an applicable Section of this Agreement, the shorter period shall control.

(C) Delay in giving a notice of default shall not constitute a waiver of any default nor shall it change the time of default. Any failures or delays by either party in asserting any of its

rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, nor deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(D) If the City Manager determines that COMPANY's performance pursuant to this Agreement may not be in conformity with the provisions of this Agreement, the Act (including, but not limited to requirements for Diversion, source reduction and Recycling as to the waste stream subject to this Agreement), or any other Applicable Law, including but not limited to, the laws governing transfer, storage or Disposal of Solid Waste or Hazardous Waste, the City Manager may advise COMPANY in writing of such suspected default in accordance with subsection 22(B), specifying the default in reasonable detail (the "Notice of Default"), and including the time within which COMPANY is to cure the default and respond, in accordance with subsection 22(B). COMPANY may request additional time to cure the default; CITY shall not unreasonably deny any such request.

(i) The City Manager shall review any written response from COMPANY and decide the matter or refer the matter to the City Council for consideration pursuant to this Section. If the City Manager's decision is adverse to COMPANY, the City Manager may order remedial actions to cure any deficiencies or invoke any other remedy in accordance with this Agreement and, in the event the City Manager determines that there has been a material breach and that termination is the appropriate remedy, terminate this Agreement. The City Manager shall promptly inform COMPANY of the City Manager's decision. In the event the decision is adverse to COMPANY, the City Manager shall inform COMPANY, in writing, of the specific facts found and evidence relied on, and the legal basis in provisions of this Agreement or other laws, for the City Manager's decision and any remedial action taken or ordered. An adverse decision by the City Manager shall be final and binding on COMPANY unless COMPANY files a "Notice of Appeal" with the City Clerk (with copies to the City Manager and City Attorney) within seven (7) days of receipt of the notification of the adverse decision by the City Manager.

(ii) In any "Notice of Appeal" to the City Council, COMPANY shall state all of its factual and legal contentions, citing provisions of this Agreement or other laws to support its contentions. Within twenty-one (21) days of the filing of the Notice of Appeal with the City Clerk, COMPANY shall deliver to the City Clerk three (3) copies of all relevant affidavits, documents, photographs and recordings that COMPANY may choose to submit.

(E) If a matter is referred by the City Manager to the City Council, or an adverse decision of the City Manager is appealed to the City Council by COMPANY, the City Clerk shall set the matter for a hearing before the City Council. The City Clerk shall give COMPANY thirty (30) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the administrative record, including the following:

(i) A staff report by the City Manager, summarizing the proceedings to date and outlining the City Council's options;



- (ii) The City Manager's written Notice of Default;
- (iii) COMPANY's response to the Notice of Default;
- (iv) The City Manager's written notification to COMPANY of adverse decision;
- (v) COMPANY's Notice of Appeal to the City Clerk; and
- (vi) Any evidence submitted by COMPANY pursuant to paragraph (ii) of subsection 22(D).

No new legal issues may be raised, or new evidence submitted by COMPANY at this or at any further point in the proceedings, absent a showing of good cause. COMPANY's representatives and other interested persons shall be provided a reasonable opportunity to be heard.

(F) Based on the administrative record, the City Council shall determine by resolution whether the decision or order of the City Manager should be upheld. A tie vote of the City Council shall be regarded as upholding the decision of the City Manager. If, based upon the administrative record, the City Council determines that the performance of COMPANY is in breach of any provision of the Agreement or of any applicable federal, State or local statute or regulation, the City Council, in the exercise of its discretion, may order COMPANY to take remedial actions to cure the breach or impose any other remedy in accordance with this Agreement, including but not limited to termination. The decision or order of the City Council shall be final and binding.

(G) COMPANY's performance under this Agreement is not excused during the period of time prior to a final determination as to whether or not COMPANY's performance is in material breach of this Agreement, or the time set by CITY for COMPANY to discontinue a portion or all of its services pursuant to this Agreement.

(H) CITY reserves the right to terminate this Agreement in the event that COMPANY fails to cure any default within the applicable cure periods, including but not limited to the following:

- (i) if COMPANY violates any material provision of any Applicable Law;
- (ii) if COMPANY fails to maintain the insurance or bonds required by Section 14, or fails to pay to CITY any monies due CITY pursuant to this Agreement, and fails to remedy such default within five (5) days after written notice thereof from CITY;
- (iii) there is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating equipment of COMPANY, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair

COMPANY's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and Holidays;

(iv) COMPANY fails to provide reasonable assurances of performance;

(v) COMPANY fails to notify CITY in a timely manner of any receipt by COMPANY of any notice of violation or official communication from those regulatory agencies regulating Solid Waste, Construction and Demolition Debris, Recyclable Materials, and Organic Material Collection Services, transportation, Processing or Disposal activities, or street sweeping activities;

(vi) If COMPANY violates in any material respect any orders or filings of any regulatory body having jurisdiction over COMPANY relative to this Agreement, provided that COMPANY may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until a final decision adverse to COMPANY is entered;

(vii) if COMPANY ceases to provide Collection Services as required under this Agreement over all or a substantial portion of the area within the City, for a period of two (2) days or more, for any reason within the control of COMPANY, including but not limited to labor disputes;

(viii) if COMPANY fails to make any payment required under this Agreement and/or refuses to provide CITY with required information, reports, and/or records in a timely manner as provided for in this Agreement;

(I) Notwithstanding Sections 22 (A), 22(B) and 22(C), CITY reserves the right to terminate this Agreement, without the need to provide COMPANY an opportunity to cure, in the event of any of the following:

(i) if COMPANY practices, or attempts to practice, any fraud or deceit upon CITY, or practiced any fraud or deceit or made any misrepresentations in the negotiations which preceded the execution of this Agreement;

(ii) if COMPANY has received three (3) or more written Notices of Default in any twelve (12) month period, irrespective of whether or not the act or omission set forth in the notice was corrected or remedied within the time set forth in the notice, but excluding notices where, after investigation, the City Manager or City Council has determined that no default occurred, and also excluding notices relating to matters that are trivial.

### **Section 23. Compliance With Laws and Regulations**

In the performance of this Agreement, COMPANY shall comply with all applicable laws, including implementing regulations, as they may be amended from time to time, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act

("CERCLA") 42 U.S.C. Sections 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq., the California Integrated Waste Management Act of 1989, the provisions of the SB 1383 Final Regulations that apply directly to COMPANY by operation of law or are duties of COMPANY under this Agreement, all applicable air pollution control laws, applicable California labor laws, and all other applicable laws of the United States of America, the State of California, the County of Santa Clara, ordinances of the City, the requirements of Local Enforcement Agencies and other agencies with jurisdiction.

#### **Section 24. General Contract Provisions**

(A) Amendment & Modification. No amendments, modifications, alterations or changes to the terms of this Agreement shall be effective unless and until made in a writing signed by both parties hereto.

(B) Americans with Disabilities Act of 1990. Throughout the term of this Agreement, the COMPANY shall comply fully with all provisions of the Americans with Disabilities Act of 1990 ("the Act") in its current form and as it may be amended from time to time that are directly applicable to COMPANY's performance of this Agreement. ADA liability is not excluded from the indemnification and defense obligations of COMPANY under this Agreement.

(C) Attorneys' Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

(D) Captions. The captions and headings of the various sections, paragraphs and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

(E) Compliance with Laws. The COMPANY shall keep itself informed of all Applicable Laws which directly relate to and affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work performed by COMPANY under this Agreement. Without limiting the foregoing, COMPANY agrees to observe the provisions of the Municipal Code of the CITY OF MORGAN HILL, obligating every contractor or subcontractor under a contract or subcontract to the CITY OF MORGAN HILL for public works or for goods or services to refrain from discriminatory employment or

subcontracting practices on the basis of the race, color, sex, religious creed, national origin, ancestry of any employee, applicant for employment, or any potential subcontractor.

(F) Conflict of Interest. COMPANY certifies that to the best of its knowledge, no CITY employee or officer of any public agency interested in this Agreement has any pecuniary interest in the business of COMPANY that may result in a violation of Government Code Section 1090 or the California Political Reform Act.

(G) Entire Agreement. This Agreement supersedes any and all prior agreements, whether oral or written, between the parties hereto with respect to the rendering of services by COMPANY for CITY and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

No other agreements or conversations with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Such other agreements or conversations shall be considered as unofficial information and in no way binding upon CITY.

(H) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflict of laws provisions of any jurisdiction. The exclusive jurisdiction and venue with respect to any and all disputes arising hereunder shall be in state and federal courts located in Santa Clara County, California.

(I) Notices. Any notice to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in Exhibit "A", Section V.H. but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed delivered as of actual receipt; mailed notices will be deemed delivered as of three (3) days after mailing.

(J) Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

(K) Waiver. COMPANY agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

ATTEST:

DocuSigned by:  
Michelle Bigelow  
City Clerk  
Date: 2/1/2023

APPROVED:

DocuSigned by:  
Donald Larkin  
Risk Manager  
Date: 1/31/2023

APPROVED AS TO FORM:

DocuSigned by:  
Donald Larkin  
City Attorney  
Date: 1/31/2023

THE CITY OF MORGAN HILL

DocuSigned by:  
Christina Turner  
City Manager  
Date: 2/1/2023

RECOLOGY SOUTH VALLEY

DocuSigned by:  
Salvatore M. Coniglio  
By: Salvatore M. Coniglio, Chief Executive Officer  
Date: December 5, 2022 | 1:51 PM PST



**EXHIBIT A**  
**SCHEDULE OF RATES**  
(Effective January 1, 2023)

**RECOLOGY SOUTH VALLEY  
CITY OF MORGAN HILL  
RATES EFFECTIVE JANUARY 1, 2023**

DESCRIPTION	Current Rates	Add Current 11.35%	New Rates
<b><u>Residential Rates</u></b>			
BASIC SINGLE FAMILY	34.32	3.90	38.22
SGL FAM - NO STREET SWEEPING	33.90	3.85	37.75
HILLSIDE RESIDENTIAL	37.34	4.24	41.58
HILLSIDE RESIDENTIAL - NO SWEEPING	36.81	4.18	40.99
LOW INCOME	27.58	3.13	30.71
LOW INCOME - NO ST SWEEPING	27.24	3.09	30.33
EX YW CONTAINER RENT			
BULKY MATERIAL (1-3 ITEMS)	45.70	5.19	50.89
BULKY MATERIAL (EACH EXTRA ITEM)	18.26	2.07	20.33
SIDE/BACKYARD SERV	13.70	1.56	15.26
SIDE/BACKYARD SERV Disabled	FREE	FREE	FREE
TOTER RENTAL	5.80	0.66	6.46
RETURNED TRIP COLLECTION	35.76	4.06	39.82

**Commercial Rates****GARBAGE**

1 CAN COMM (32 GALLON)	21.00	2.38	23.38
2 CANS COMM (64 GALLON)	34.41	3.91	38.32
3 CANS COMM (96 GALLON)	47.91	5.44	53.35
4 CANS COMM (128 GALLON)	61.41	6.97	68.38
5 CANS COMM (160 GALLON)	74.89	8.50	83.39
6 CANS COMM (192 GALLON)	88.40	10.04	98.44
7 CANS COMM (224 GALLON)	101.83	11.56	113.39
8 CANS COMM (256 GALLON)	115.29	13.09	128.38
9 CANS COMM (288 GALLON)	128.78	14.62	143.40
10 CANS COMM (320 GALLON)	142.26	16.15	158.41
1 CAN COMM (32 GALLON) w/cart			29.84
2 CANS COMM (64 GALLON) w/cart			44.78
3 CANS COMM (96 GALLON) w/cart			59.81

**ORGANICS**

32 GALLON 1 X WEEK	16.80	1.91	18.71
32 GALLON 2 X WEEK			35.48
32 GALLON 3 X WEEK			52.24
32 GALLON 4 X WEEK			69.00
32 GALLON 5 X WEEK			85.77
32 GALLON CONTAMINATED Recycle and Organics			39.82
64 GALLON 1 X WEEK	27.53	3.13	30.66
64 GALLON 2 X WEEK			58.13
64 GALLON 3 X WEEK			85.60
64 GALLON 4 X WEEK			113.08
64 GALLON 5 X WEEK			140.55
64 GALLON CONTAMINATED Recycle and Organics			39.82
96 GALLON 1 X WEEK	38.32	4.35	42.67
96 GALLON 2 X WEEK			80.91
96 GALLON 3 X WEEK			119.13
96 GALLON 4 X WEEK			157.37
96 GALLON 5 X WEEK			195.60
96 GALLON CONTAMINATED Recycle and Organics			39.82

**RECOLOGY SOUTH VALLEY  
CITY OF MORGAN HILL  
RATES EFFECTIVE JANUARY 1, 2023**

DESCRIPTION	Current Rates	Add Current 11.35%	New Rates
<b><u>Commercial Rates</u></b>			
<i>GARBAGE</i>			
1 YD 1 X WEEK	179.85	20.42	200.27
1 YD 2 X WEEK	341.01	38.72	379.73
1 YD 3 X WEEK	502.14	57.01	559.15
1 YD 4 X WEEK	663.31	75.31	738.62
1 YD 5 X WEEK	824.43	93.61	918.04
1 YD 6 X WEEK	984.38	111.77	1,096.15
2 YD 1 X WEEK	260.66	29.60	290.26
2 YD 2 X WEEK	494.22	56.11	550.33
2 YD 3 X WEEK	727.75	82.63	810.38
2 YD 4 X WEEK	961.31	109.15	1,070.46
2 YD 5 X WEEK	1,194.81	135.66	1,330.47
2 YD 6 X WEEK	1,426.65	161.98	1,588.63
1/2 3 YD 1 X WEEK (Grandfather)	188.78	21.43	210.21
3 YD 1 X WEEK	377.57	42.87	420.44
3 YD 2 X WEEK	719.01	81.64	800.65
3 YD 3 X WEEK	1,060.54	120.42	1,180.96
3 YD 4 X WEEK	1,401.94	159.18	1,561.12
3 YD 5 X WEEK	1,743.40	197.95	1,941.35
3 YD 6 X WEEK	2,084.85	236.72	2,321.57
4 YD 1 X WEEK	488.55	55.47	544.02
4 YD 2 X WEEK	928.46	105.42	1,033.88
4 YD 3 X WEEK	1,368.41	155.37	1,523.78
4 YD 4 X WEEK	1,808.37	205.32	2,013.69
4 YD 5 X WEEK	2,248.28	255.27	2,503.55
4 YD 6 X WEEK	2,688.22	305.22	2,993.44
6 YD 1 X WEEK	729.96	82.88	812.84
6 YD 2 X WEEK	1,396.97	158.61	1,555.58
6 YD 3 X WEEK	2,063.98	234.35	2,298.33
6 YD 4 X WEEK	2,731.02	310.08	3,041.10
6 YD 5 X WEEK	3,398.06	385.82	3,783.88
6 YD 6 X WEEK	4,065.07	461.55	4,526.62
SPECIAL COLLECTION	30.00	3.41	33.41
<i>ORGANICS</i>			
1 YD 1 X WEEK	143.88	16.34	160.22
1 YD 2 X WEEK	272.80	30.97	303.77
1 YD 3 X WEEK	401.71	45.61	447.32
1 YD 4 X WEEK	530.64	60.25	590.89
1 YD 5 X WEEK	659.54	74.89	734.43
1 YD 6 X WEEK	787.51	89.41	876.92
1 YD CONTAMINATED Recycle and Organics			50.07
2 YD 1 X WEEK	208.53	23.68	232.21
2 YD 2 X WEEK	395.37	44.89	440.26
2 YD 3 X WEEK	582.20	66.10	648.30
2 YD 4 X WEEK	769.05	87.32	856.37
2 YD 5 X WEEK	955.85	108.53	1,064.38
2 YD 6 X WEEK	1,141.32	129.59	1,270.91
2 YD CONTAMINATED Recycle and Organics			72.57
3 YD 1 X WEEK	302.06	34.30	336.36
3 YD 2 X WEEK	575.22	65.31	640.53
3 YD 3 X WEEK	848.43	96.33	944.76
3 YD 4 X WEEK	1,121.56	127.34	1,248.90
3 YD 5 X WEEK	1,394.72	158.36	1,553.08
3 YD 6 X WEEK	1,667.87	189.37	1,857.24
3 YD CONTAMINATED Recycle and Organics			105.11
4 YD 1 X WEEK	390.85	44.38	435.23

**RECOLOGY SOUTH VALLEY  
CITY OF MORGAN HILL  
RATES EFFECTIVE JANUARY 1, 2023**

DESCRIPTION	Current Rates	Add Current 11.35%	New Rates
4 YD 2 X WEEK	742.78	84.34	827.12
4 YD 3 X WEEK	1,094.72	124.30	1,219.02
4 YD 4 X WEEK	1,446.69	164.26	1,610.95
4 YD 5 X WEEK	1,798.62	204.22	2,002.84
4 YD 6 X WEEK	2,150.58	244.18	2,394.76
4 YD CONTAMINATED Recycle and Organics			136.01
6 YD 1 X WEEK	583.97	66.30	650.27
6 YD 2 X WEEK	1,117.57	126.89	1,244.46
6 YD 3 X WEEK	1,651.19	187.48	1,838.67
6 YD 4 X WEEK	2,184.81	248.07	2,432.88
6 YD 5 X WEEK	2,718.44	308.66	3,027.10
6 YD 6 X WEEK	3,252.06	369.24	3,621.30
6 YD CONTAMINATED Recycle and Organics			203.21
<i>SPECIAL COLLECTION Per yard</i>	23.99	2.72	26.71
REGULAR COMPACTOR (PER YARD)	47.39	5.38	52.77
RECYCLE COMPACTOR (PER YARD)	28.01	3.18	31.19
SUPER COMPACTOR (PER YARD)	94.74	10.76	105.50
20 YARD DEBRIS BOX	521.51	59.21	580.72
35 YARD DEBRIS BOX	745.03	84.59	829.62
40 YARD DEBRIS BOX	869.25	98.70	967.95
<i>ORGANICS</i>			
20 YARD DEBRIS BOX	417.21	47.37	464.58
35 YARD DEBRIS BOX	596.02	67.67	663.69
40 YARD DEBRIS BOX	695.40	78.96	774.36
<i>Debris Box Contaminated</i>			
20 YARD DEBRIS BOX Contaminated			580.72
35 YARD DEBRIS BOX Contaminated			829.62
40 YARD DEBRIS BOX Contaminated			967.95
<i>Debris Box Return Trip Fee</i>			75.00
PERM RENTAL	276.30	31.37	307.67
PERM DISPOSAL (PER YARD)	25.99	2.95	28.94
CARDBOARD COMPACTOR w/ garbage ser	FREE	FREE	FREE
20 YARD CARDBOARD w/ garbage service	FREE	FREE	FREE
40 YARD CARDBOARD w/ garbage service	FREE	FREE	FREE
20 YARD OTHER RECYCLABLES	266.57	30.27	296.84
40 YARD OTHER RECYCLABLES	444.33	50.45	494.78
20 YARD DEBRIS BOX HILLSIDE	650.24	73.83	724.07
40 YARD DEBRIS BOX HILLSIDE	997.49	113.26	1,110.75
<b><u>Compactor Front Loader Service</u></b>			
2 YARD COMPACTOR 1 X WEEK	410.68	46.63	457.31
2 YARD COMPACTOR 2 X WEEK	821.35	93.26	914.61
2 YARD COMPACTOR 3 X WEEK	1,232.03	139.89	1,371.92
3 YARD COMPACTOR 1 X WEEK	616.03	69.94	685.97
3 YARD COMPACTOR 2 X WEEK	1,232.03	139.89	1,371.92
<b><u>Super Compactor Front Loader Service</u></b>			
2 YARD COMPACTOR 1 X WEEK	821.17	93.24	914.41
2 YARD COMPACTOR 2 X WEEK	1,642.33	186.47	1,828.80
2 YARD COMPACTOR 3 X WEEK	2,463.50	279.71	2,743.21
3 YARD COMPACTOR 1 X WEEK	1,231.74	139.85	1,371.59
3 YARD COMPACTOR 2 X WEEK	2,463.50	279.71	2,743.21
<b><u>Special Street Sweeping</u></b>			
M-F 8:00AM-5:00PM (PER HOUR)	75.00	-	75.00
ALL OTHER HOURS (MINIMUM + HOURLY)	500.00	-	500.00

**EXHIBIT A2**  
**RATE ADJUSTMENT FORMULA**



Exhibit A 2  
Rate Adjustment Formula

No later than March 1 of each agreement year, COMPANY shall annually submit to City for approval its calculation of the percentage adjustment to be applied to customer rates during the following contract year. The adjustment shall be calculated using the following components and sub-components:

**(1) Consumer Price Index (CPI) Component.**

The CPI Component is equal to 83.5% and the Consumer Price Index" or "CPI" means the Consumer Price Index (CPI) All Urban Consumers for the San Francisco - Oakland - San Jose Metropolitan Area, base period 1982-84=100. This index is used to adjust the portion of rates that the parties have agreed represents costs for labor, capitalized equipment, equipment parts, repair and maintenance, facilities, utilities, insurance, administration and other necessary and reasonable costs not specified below.

COMPANY shall calculate the percentage change between the CPI values published for October of the two immediately preceding years before the date of the rate application. The calculated annual percentage change is then multiplied by 83.5% and the resulting percentage shall equal the applicable CPI Component Adjustment.

**(2) Fuel Component.**

The Fuel Component is equal to 3.5% of each service rate. This component is used to adjust the portion of rates that the parties have agreed represents the cost of fuel used by COMPANY for its operations. It is adjusted by the percentage change in unit cost per therm for natural gas fuel charged to COMPANY by its natural gas fuel provider, currently Pacific Gas & Electric (PG&E) under Rate Schedule G-NGV1.

COMPANY shall calculate the average monthly cost per therm for each of the two most recent years ending October 31 and then calculate the percentage change between the average monthly cost per therm for those two years. The average monthly cost per therm for each year is calculated by summing the twelve month "Total G-NGV1 Charges" that appear on the PG&E billings and dividing that total by twelve (12). The calculated annual percentage change is multiplied by 3.5% and the resulting percentage shall equal the applicable Fuel Component Adjustment.

The term "Natural gas" may also include methane fuel from other sources, including but not limited to methane fuel produced from landfill, dairy or digester gas. Cost for fuel from such other source will be adjusted based on the change in the applicable average annual cost per therm in the most recent year ending October 31.

If more than one methane fuel source is used, COMPANY shall calculate a weighted unit cost based on the proportional cost and quantity of fuel used from each fuel source. That weighted unit cost would then be compared to the unit cost per therm from the preceding year to determine the annual percent change in unit cost per therm. The result would then be multiplied by 3.5%.

**(3) Disposal Component.**

Exhibit A 2  
Rate Adjustment Formula

The Disposal Component is equal to 10.5% of each service rate and this component is used to adjust the portion of rates that the parties have agreed represents the cost of disposing solid waste at the designated disposal facility. It is annually adjusted by the percent of change in the unit cost of disposal, measured in dollars per ton disposed.

COMPANY shall calculate the percentage change in the unit cost of disposal between the two invoices for the month of October for the two most recent years ending October 31. The calculated annual percent change is then multiplied by 10.5% and the resulting percentage shall equal the applicable Disposal Component Adjustment.

**(4) Recyclables Processing Component.**

This Recyclables Processing Component is equal to 2.5% of each service rate and is used to adjust the portion of rates that the parties have agreed represents the cost of processing recyclable materials delivered to a recycling processing facility. It is annually adjusted by the percent of change in the unit cost, of processing, including amounts for any revenue received from contractor from the processor for recyclable material delivered by contractor for processing, measured in dollars per ton processed. COMPANY shall compare the unit cost of (or revenue from) processing for the most recent year ending October 31 to the corresponding unit cost from the preceding year. For the initial year of the term only, the preceding year cost is agreed to be \$35 per ton processed. The calculated annual percentage change is then multiplied by 2.5% and the resulting percentage shall equal the Recyclables Processing Component Adjustment.

If in the preceding year, net transactions between the processor and COMPANY resulted in processor paying COMPANY for recycled materials, COMPANY shall divide the net revenues by the tons delivered to calculate revenue per ton. Revenue per ton will be compared to the unit cost of processing (or preceding year unit revenue, if applicable) for the preceding year to calculate the change in unit value. For example, \$5 per ton revenue would equal a net change of \$40  $(-\$5 - \$35)$  per ton if the preceding year processing cost was \$35 per ton. This example would produce a cost component decrease calculated as  $(-\$5 - \$35) / \$35$ , or -114.28%. That cost component decrease would then be applied to 2.5% of COMPANY's current rates.

**(5) Exceptional Costs Component.**

In addition to the adjustments based on the components set forth above in Sections (1) through (4), the rates will be adjusted in an amount sufficient for Contractor to recover the EXCEPTIONAL COSTS described in Section 8(C) that were incurred during the previous year and the amount of the solid waste implementation fee that Contractor shall be required to pay during the upcoming rate year. Examples of Exceptional Cost changes include, but are not limited to:

- Cost of Performance Audit
- Cost of compost provided by COMPANY pursuant to Section 5(J)
- Cost of City-requested homeless encampment and other cleanup events
- Cost of City-requested disposal vouchers

Exhibit A 2  
Rate Adjustment Formula

The net total of Exceptional Cost will be divided by COMPANY'S Annualized Billed Revenue and the resulting percentage shall equal the applicable Exceptional Costs Component Adjustment. Annualized Billed Revenue is defined as two times COMPANY's billed revenues for the six months ending the preceding December 31 of each year, minus the amount included as Exceptional Costs expended by COMPANY in the prior year's rate adjustment application.

**(6) Calculation of Adjustment to Maximum Service Rates**

Contractor shall calculate the sum of the CPI Component Adjustment, Fuel Component Adjustment, Disposal Component Adjustment, Recyclables Processing Component Adjustment, and Exceptional Costs Component Adjustment calculated in Sections (1) through (5). The resulting percentage shall be equal to the percentage rate increase that will be applied to each of the maximum service rates that shall become effective July 1 of each agreement year (the "Total Rate Adjustment Percentage"). An example of the calculation of the Total Rate Adjustment Percentage appears on the following pages.

Finally, COMPANY adjusts its current service rates by the Total Rate Adjustment Percentage to calculate its proposed maximum service rates for the following year.

RECOLOGY SOUTH VALLEY  
CITY OF MORGAN HILL  
RATE ADJUSTMENT EXAMPLE  
EFFECTIVE JULY 1, XXXX

Rate change calculation formula 
$$\frac{X(1) - X(2)}{X(2)}$$

1) CPI Index Component

X (1) = October, 2021 = 313.265  
X (2) = October, 2020 = 301.736

CPI = 
$$\frac{313.265 - 301.736}{301.74}$$

CPI = 3.82%  
Percentage Applicable 83.5%  
83.5% of CPI = 3.19%

2) Fuel (PG&E Schedule G-NGV1)

X (1) = 12-mo Average ended Oct-21 = 0.860  
X (2) = 12-mo Average ended Oct-20 = 0.740

Fuel = 
$$\frac{0.86 - 0.74}{0.74}$$

Fuel = 16.22%  
Percentage Applicable 3.5%  
3.5% of Fuel = 0.57%

3) Disposal Component

X (1) = MSW Disposal Rate January 2021 25.59  
X (2) = MSW Disposal Rate January 2020 25.34

Disposal Change = 
$$\frac{25.59 - 25.34}{25.34}$$

Disposal Change = 0.99%  
Percentage Applicable 10.5%  
10.5% of Disposal = 0.10%

4) Recyclables Processing Component

X (1) = Recyclables unit cost per ton 2021 35.00  
X (2) = Recyclables unit cost per ton 2020 30.00

Recyclables unit cost per ton Change = 
$$\frac{35 - 30}{30.00}$$

Recyclables unit cost per ton Change = 16.67%  
Percentage Applicable 2.5%  
2.5% of Recyclables Processing = 0.42%

5) Exceptional Costs

Annualized Billed Revenue	12,000,000
Remove Prior Year Exceptional Costs	(48,000)
Performance Audit	0
City requested homeless encampment and other clean-up events	5,000
City requested disposals vouchers	2,500
Annual Mandatory Implementation Funds	30,000
Other City requested item a	5,000
Other City requested item b	1,000
Other City requested item c	250
Current Year Exceptional Costs	43,750



TOTAL EXCEPTIONAL COSTS (4,250)

Exceptional Costs Adjustment = -0.04%

Total rate adjustment (1+2+3+4+5) 4.24%

<https://data.bls.gov/cgi-bin/srgate>

CUURS49BSA0


<https://data.bls.gov/pdq/SurveyOutputServlet>
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## Databases, Tables & Calculators by Subject

Change Output Options:

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Data extracted on: February 16, 2022 (6:11:07 PM)

### CPI for All Urban Consumers (CPI-U)

Series Id: CUURS49BSA0


Not Seasonally Adjusted

Series Title: All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted

Area: San Francisco-Oakland-Hayward, CA

Item: All items

Base Period: 1982-84=100

Download:  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2011		229.981		234.121		233.646		234.608		235.331		234.327	233.390	232.082	234.698
2012		236.880		238.985		239.806		241.170		242.834		239.533	239.650	238.099	241.201
2013		242.677		244.675		245.935		246.072		246.617		245.711	245.023	243.894	246.152
2014		248.615		251.495		253.317		253.354		254.503		252.273	251.985	250.507	253.463
2015		254.910		257.622		259.117		259.917		261.019		260.289	258.572	256.723	260.421
2016		262.600		264.565		266.041		267.853		270.306		269.483	266.344	263.911	268.777
2017		271.626		274.589		275.304		275.893		277.570		277.414	274.924	273.306	276.542
2018		281.308		283.422		286.062		287.664		289.673		289.896	285.550	282.666	288.435
2019		291.227		294.801		295.259		295.490		298.443		297.007	295.004	293.150	296.859
2020		299.690		298.074		300.032		300.182		301.736		302.948	300.084	299.109	301.059
2021		304.387		309.419		309.497		311.167		313.265		315.805	309.721	306.724	312.718



[http://www.pge.com/notes/rates/tariffs/GRF\\_SHTML#GNGV1](http://www.pge.com/notes/rates/tariffs/GRF_SHTML#GNGV1)

Pacific Gas and Electric Company

Schedule G-NGV1  
Natural Gas Service for Compression<sup>1/</sup>  
on Customers' Premises  
January 1, 2019, to December 31, 2020  
(\$/therm<sup>2/</sup>)

Effective Date	Advice Number	Customer Charge	Procurement Charge	Transportation Charge	Total G-NGV1 Charge <sup>4/</sup>	Cap-and-Trade Cost Exemption Credit <sup>5/</sup>	PPP Surcharge <sup>4/</sup>
		(\$/day)					
01/01/19	4052-G	\$0.44121	\$0.38544	\$0.39675	\$0.78219	\$0.04781	\$0.02811
02/01/19	4063-G	\$0.44121	\$0.41033	\$0.39675	\$0.80708	\$0.04781	\$0.02811
03/01/19	4070-G	\$0.44121	\$0.33998	\$0.39675	\$0.73673	\$0.04781	\$0.02811
04/01/19	4079-G	\$0.44121	\$0.26565	\$0.40300	\$0.66865	\$0.04781	\$0.02811
05/01/19	4092-G	\$0.44121	\$0.17121	\$0.40300	\$0.57421	\$0.04781	\$0.02811
06/01/19	4102-G	\$0.44121	\$0.15989	\$0.40300	\$0.56289	\$0.04781	\$0.02811
07/01/19	4113-G	\$0.44121	\$0.23873	\$0.40300	\$0.64173	\$0.04781	\$0.02811
08/01/19	4122-G	\$0.44121	\$0.25501	\$0.35867	\$0.61368	\$0.04781	\$0.02811
09/01/19	4135-G	\$0.44121	\$0.21066	\$0.35867	\$0.56933	\$0.04781	\$0.02811
10/01/19	4148-G	\$0.44121	\$0.21928	\$0.37707	\$0.59635	\$0.04781	\$0.02811
11/01/19	4172-G	\$0.44121	\$0.27540	\$0.37707	\$0.65247	\$0.04781	\$0.02811
12/01/19	4183-G	\$0.44121	\$0.34410	\$0.37707	\$0.72117	\$0.04781	\$0.02811
01/01/20	4199-G	\$0.44121	\$0.39729	\$0.39035	\$0.78764	\$0.04893	\$0.02857
02/01/20	4209-G	\$0.44121	\$0.38623	\$0.39035	\$0.77658	\$0.04893	\$0.02857
03/01/20	4222-G	\$0.44121	\$0.27579	\$0.51148	\$0.78727	\$0.05161	\$0.02857
04/01/20	4230-G	\$0.44121	\$0.17368	\$0.51148	\$0.68516	\$0.05161	\$0.02857
05/01/20	4240-G	\$0.44121	\$0.16308	\$0.51148	\$0.67456	\$0.05161	\$0.02857
06/01/20	4251-G	\$0.44121	\$0.18301	\$0.51148	\$0.69449	\$0.05161	\$0.02857
07/01/20	4265-G	\$0.44121	\$0.17652	\$0.51148	\$0.68800	\$0.05161	\$0.02857
08/01/20	4277-G	\$0.44121	\$0.22119	\$0.51148	\$0.73267	\$0.05161	\$0.02857
09/01/20	4300-G	\$0.44121	\$0.35702	\$0.51148	\$0.86850	\$0.05161	\$0.02857
10/01/20	4313-G	\$0.44121	\$0.31912	\$0.51483	\$0.83395	\$0.05161	\$0.02857
11/01/20	4327-G	\$0.44121	\$0.39607	\$0.51483	\$0.91090	\$0.05161	\$0.02857
12/01/20	4337-G	\$0.44121	\$0.42093 <sup>3/</sup>	\$0.51483	\$0.93576	\$0.05161	\$0.02857
01/01/21	4347-G	\$0.44121	\$0.42688	\$0.52017	\$0.94705	\$0.07366	\$0.04308
02/01/21	4372-G	\$0.44121	\$0.42371	\$0.52017	\$0.94388	\$0.07366	\$0.04308
03/01/21	4390-G	\$0.44121	\$0.35715	\$0.55521	\$0.91236	\$0.07366	\$0.04308
04/01/21	4408-G	\$0.44121	\$0.15796	\$0.55521	\$0.71317	\$0.07366	\$0.04308
05/01/21	4426-G	\$0.44121	\$0.14327	\$0.55521	\$0.69848	\$0.07366	\$0.04308
06/01/21	4439-G	\$0.44121	\$0.15061	\$0.55433	\$0.70494	\$0.07366	\$0.04308
07/01/21	4455-G	\$0.44121	\$0.12506	\$0.55433	\$0.67939	\$0.07366	\$0.04308
08/01/21	4470-G	\$0.44121	\$0.15999	\$0.55433	\$0.71432	\$0.07366	\$0.04308
09/01/21	4480-G	\$0.44121	\$0.37864	\$0.55433	\$0.93297	\$0.07366	\$0.04308
10/01/21	4497-G	\$0.44121	\$0.61632	\$0.55433	\$1.17065	\$0.07366	\$0.04308
11/01/21	4515-G	\$0.44121	\$0.74245	\$0.55433	\$1.29678	\$0.07366	\$0.04308
12/01/21	4532-G	\$0.44121	\$0.75586	\$0.55433	\$1.31019	\$0.07366	\$0.04308
01/01/22	4542-G	\$0.44121	\$0.69158	\$0.64160	\$1.33318	\$0.10234	\$0.04380
02/01/22	4559-G	\$0.44121	\$0.66224	\$0.64160	\$1.30384	\$0.10234	\$0.04380
03/01/22	4578-G	\$0.44121	\$0.54679	\$0.64160	\$1.18839	\$0.10234	\$0.04380
04/01/22	4589-G	\$0.44121	\$0.45563	\$0.63517	\$1.09080	\$0.10235	\$0.04380
05/01/22	4602-G	\$0.44121	\$0.56892	\$0.63517	\$1.20409	\$0.10235	\$0.04380
06/01/22	4614-G	\$0.44121	\$0.62615	\$0.63517	\$1.26132	\$0.10235	\$0.04380
07/01/22	4622-G	\$0.44121	\$0.66807 <sup>3/</sup>	\$0.63517	\$1.30324	\$0.10235	\$0.04380

<sup>1/</sup> Rate Schedule G-NGV1 was converted to Standard Status, rather than Experimental, effective August 30, 2008, due to

<sup>2/</sup> Unless otherwise noted.

<sup>3/</sup> This procurement rate includes a charge of \$0.01115 per therm to reflect account balance amortizations in accordance

<sup>4/</sup> Schedule G-PPPS (Public Purpose Program surcharge) needs to be added to the Total G-NGV1 Charge for bill calculation. See Schedule G-PPPS for details and exempt customers.

<sup>5/</sup> The Cap-and-Trade Cost Exemption Credit is applicable to Covered Entities (i.e., customers that currently have a direct allowances directly to the Air Resources Board for their Greenhouse Gas (GHG) emissions) who will see a line item on their bill per therm times their monthly billed volumes. See tariff for further explanation.



Waste Solutions Group of San Benito, LLC  
 Remit To: John Smith Landfill  
 PO Box 1480  
 Hollister, CA 95024  
 (831) 637-4515

# John Smith Landfill INVOICE

Page 1 of 3

DATE	CUST ID
01/31/2020	411
INVOICE NUMBER	
13920	

AMOUNT DUE
\$140,516.66

San Martin Transfer Station  
 1351 Pacheco Pass Hwy  
 Gilroy, CA 95020  
 PD# 348547

PAYMENT IS DUE UPON RECEIPT OF INVOICE. LATE  
 PAYMENT MAY RESULT IN AN INTERRUPTION OF  
 SERVICE. ANY PAYMENT NOT RECEIVED WITHIN 30  
 DAYS OF THE 30-DAY DATE WILL BE CONSIDERED PAST  
 DUE. PAST DUE INVOICES SHALL BE SUBJECT TO A  
 LATE CHARGE FOR EACH MONTH OR PART THEREOF  
 THAT THE INVOICE IS PAST DUE.

RETURN TOP PORTION WITH REMITTANCE MAKE CHECKS PAYABLE TO JOHN SMITH LANDFILL

DATE	TICKET	TRUCK ID	REFERENCE	TON/YARD	DESCRIPTION	CHARGE
01/06/20	9542	INV # 13752	CHECK # 11924556		1 Payment	-67,309.07
01/21/20	9725	INV # 13819	CHECK # 11928915		1 Payment	-67,309.07
					BALANCE FORWARD	\$68,514.74
01/16/20	726249	16145		18.84	REFUSE	477.41
01/16/20	726250	16174		20.69	REFUSE	524.28
01/16/20	726255	16175		19.56	REFUSE	498.18
01/16/20	726262	16394		20.55	REFUSE	520.74
01/16/20	726307	16174		18.25	REFUSE	462.46
01/16/20	726318	16175		18.54	REFUSE	472.34
01/16/20	726338	16394		21.55	REFUSE	546.06
01/17/20	726343	16174		20.83	REFUSE	523.63
01/17/20	726384	16145		19.90	REFUSE	478.93
01/17/20	726387	16175		20.04	REFUSE	507.81
01/17/20	726389	16394		22.72	REFUSE	575.72
01/17/20	726392	16363		20.59	REFUSE	524.28
01/17/20	726409	16174		21.14	REFUSE	535.69
01/17/20	726414	16145		18.95	REFUSE	480.19
01/17/20	726420	16175		20.12	REFUSE	509.84
01/17/20	726434	16394		23.01	REFUSE	583.07
01/17/20	726460	16363		20.96	REFUSE	531.63
01/18/20	726529	16394		23.12	REFUSE	585.86
01/18/20	726530	16174		21.25	REFUSE	538.48
01/18/20	726531	16175		20.90	REFUSE	506.80
01/18/20	726535	16145		18.95	REFUSE	480.19
01/18/20	726572	16394		21.03	REFUSE	532.00
01/18/20	726579	16174		21.02	REFUSE	532.65
01/18/20	726592	16175		20.43	REFUSE	517.70
01/18/20	726600	16145		18.63	REFUSE	472.06
01/20/20	726942	16174		20.57	REFUSE	523.78
01/20/20	726943	16145		16.89	REFUSE	427.99
01/20/20	726946	16175		17.31	REFUSE	438.64
01/20/20	726950	16394		22.80	REFUSE	577.75
01/20/20	726984	16175		19.78	REFUSE	500.72
01/20/20	726996	16174		20.97	REFUSE	531.38
01/20/20	727013	16394		22.98	REFUSE	582.31
01/20/20	727104	16175		20.42	REFUSE	517.44
01/20/20	727120	16394		22.82	REFUSE	578.26

Charge	Tons	Rate
477.41	18.84	25.34
520.74	20.55	25.34



Waste Solutions Group of San Benito, LLC  
 Remk Tex. John Smith Landfill  
 P.O. Box 1489  
 Hollister, CA 95024  
 (408) 637-4515

John Smith Landfill  
 INVOICE

Page 1 of 3

DATE	CUSTOMER
01/15/2021	611
INVOICE NUMBER	
15075	
AMOUNT DUE	
\$198,536.51	

S I L L T	San Martin Transfer Station 1351 Pacheco Pass Hwy Gilroy, CA 95020
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PAYMENT IS DUE FOR MONTHLY TONNAGE RATE.  
 PAYMENT MAY BE MADE BY CHECK OR CREDIT CARD.  
 PAYMENT MUST BE RECEIVED BY THE 15TH OF THE MONTH.  
 DATE OF DELIVERY DATE WILL BE CREDITED PART  
 DUE. AND CREDIT VOUCHER WILL BE SUBJECT TO A  
 LATE PENALTY FOR EACH MONTH OR PART THEREOF  
 THAT THE INVOICE IS DUE.

RETURN TOP PORTION WITH REMITTANCE

MAKE CHECKS PAYABLE TO JOHN SMITH LANDFILL

DATE	TICKET	TRUCKID	REFERENCE	TON YARD	DESCRIPTION	CHARGE
12/08/20	1154	INV # 14855	CHECK # 11954993		1 Payment	-62,310.40
12/02/20	11274	INV # 14936	CHECK # 11955532		1 Payment	-65,916.59
					BALANCE FORWARD	\$132,860.99
01/02/21	810410	16238		21.15	REFUSE	541.23
01/02/21	810412	16174		20.87	REFUSE	534.06
01/02/21	810413	16353		20.42	REFUSE	522.55
01/02/21	810437	16439		20.66	REFUSE	528.60
01/02/21	810447	16174		21.40	REFUSE	547.83
01/02/21	810478	16353		20.83	REFUSE	529.04
01/02/21	810498	16438		20.50	REFUSE	534.83
01/02/21	810504	16174		21.34	REFUSE	546.09
01/02/21	810601	16353		20.61	REFUSE	522.59
01/04/21	810804	16438		20.67	REFUSE	536.62
01/04/21	810807	16174		20.86	REFUSE	539.81
01/04/21	810809	16354		22.51	REFUSE	565.27
01/04/21	810859	16439		20.74	REFUSE	530.74
01/04/21	810878	16174		21.00	REFUSE	530.60
01/04/21	810889	16394		23.31	REFUSE	566.58
01/04/21	810983	16438		20.80	REFUSE	527.15
01/04/21	810989	16174		20.60	REFUSE	534.83
01/04/21	811012	16394		23.68	REFUSE	569.41
01/05/21	811044	16438		20.71	REFUSE	529.97
01/05/21	811045	16174		21.38	REFUSE	547.11
01/05/21	811046	16394		23.16	REFUSE	552.69
01/05/21	811087	16438		20.70	REFUSE	529.71
01/05/21	811094	16174		21.16	REFUSE	541.48
01/05/21	811099	16394		23.19	REFUSE	563.43
01/05/21	811145	16153		20.79	REFUSE	532.02
01/05/21	811164	16439		20.88	REFUSE	534.32
01/05/21	811171	16174		20.74	REFUSE	530.74
01/05/21	811187	16394		22.55	REFUSE	567.55
01/05/21	811218	16153		20.66	REFUSE	526.13
01/05/21	811245	16438		21.23	REFUSE	543.29
01/06/21	811249	16174		20.87	REFUSE	530.62
01/06/21	811263	16394		23.67	REFUSE	569.18
01/06/21	811303	16438		20.66	REFUSE	528.69
01/06/21	811305	16174		21.13	REFUSE	540.72

Charge	Tons	Rate
541.23	21.15	25.59
522.55	20.42	25.59

RECOLOGY SOUTH VALLEY  
CITY OF MORGAN HILL  
Recyclables unit cost per ton - EXAMPLE

	Month	Tons	Cost/(Revenue)	
<b>2021</b>	January	1795	\$53,850.00	
	February	1569	\$47,070.00	
	March	1668	\$50,040.00	
	April	1664	\$49,920.00	
	May	1927	\$57,810.00	
	June	1865	\$55,950.00	
	July	1762	\$52,860.00	
	August	1641	\$49,230.00	
	September	1674	\$50,220.00	
	October	1440	\$43,200.00	
	November	1547	\$46,410.00	
	December	1753	\$52,590.00	
		20,305	\$609,150.00	Cost/(Revenue) per ton 2021 \$30.00

	Month	Tons	Cost/(Revenue)	
<b>2020</b>	January	1785	\$62,475.00	
	February	1554	\$54,390.00	
	March	1680	\$58,800.00	
	April	1677	\$58,695.00	
	May	1952	\$68,320.00	
	June	1839	\$64,365.00	
	July	1748	\$61,180.00	
	August	1628	\$56,980.00	
	September	1693	\$59,255.00	
	October	1473	\$51,555.00	
	November	1521	\$53,235.00	
	December	1734	\$60,690.00	
		20,284	\$709,940.00	Cost/(Revenue) per ton 2020 \$35.00

## **EXHIBIT B INSURANCE REQUIREMENTS**

COMPANY shall, for the duration of the franchise agreement, procure, maintain, and provide proof of the insurance coverage required herein in the form of certificates and endorsements acceptable to City. The required insurance must cover the activities of COMPANY including its subcontractors, employees, and agents, relating to or arising from the performance of the work and activities under this agreement. **The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. All required insurance must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A-" or better and a financial size rating of "VIII" or better. If COMPANY fails to provide any of the required coverage in full compliance with the requirements of the Agreement Documents, City may, at its sole discretion, purchase such coverage at COMPANY's expense and deduct the cost from payments due to COMPANY, or terminate the agreement for default. COMPANY further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to COMPANY, at any time as deemed necessary to protect the interests of City. The procurement of the required insurance will not be construed to limit COMPANY's liability under this agreement or to fulfill COMPANY's indemnification obligations under this agreement.**

- (A) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. If the City's Risk Manager determines that the deductibles and/or self-insured retentions are unacceptably high, at City's option, COMPANY must either reduce or eliminate the deductibles and/or self-insured retentions as they apply to City and all required Additional Insured; or must provide a financial guarantee, to City's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.

(B)

(B) **Policies and Limits.** The following insurance policies and limits are required for this Agreement:

- (1) **Commercial General Liability Insurance ("CGL").** COMPANY shall maintain CGL and must include coverage for liability arising from COMPANY's or its Subcontractors' acts or omissions in the performance of its work and activities against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit for any one accident or



occurrence and a general aggregate limit of ten million dollars (\$10,000,000.00) under COMPANY's combined insurance policies (including any excess or "umbrella" policies).

(2) **Workers' Compensation Insurance and Employer's Liability:**

COMPANY shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) Two Million Dollars (\$2,000,000.00) for any one accident or occurrence. If COMPANY is self-insured, COMPANY must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(3) **Automobile Liability:** COMPANY shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if COMPANY does not own automobiles, then COMPANY shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) Five Million Dollars (\$5,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to COMPANY under COMPANY's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(4) **Pollution (Environmental) Liability:** Because the performance of COMPANY's work or service under this Agreement involves hazardous materials, COMPANY shall procure and maintain Pollution Liability covering COMPANY's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of Two Million Dollars (\$2,000,000.00) for any one accident or occurrence.

(C) **Required Endorsements.** COMPANY must provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) For all Policies:

- a. "Waiver of Subrogation" endorsements providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability, Automobile, and Pollution Liability:

- a. "Additionally Insured" endorsements naming the City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers as additional insureds on a form at least as broad as ISO Form CG 20 10 for ongoing operations;
- b. "Primary and Non-Contributing" endorsements stating that the policy is primary non-contributing and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 01;

(3) General Liability:

- a. "Separation of Insureds" endorsements stating that the inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(D) **Subcontractors.** COMPANY will request all subcontractors performing work in connection with this Agreement to maintain the following minimum insurance: Workers' Compensation in accordance with applicable law or regulation, Employer's Liability with limits of \$500,000, Commercial General Liability with limits of \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate, and Automobile Liability insurance with limits of \$1,000,000. The insurance requirements for subcontractors do not replace or limit the COMPANY's insurance obligations.

(E) **Certificates.** COMPANY must furnish City with copies of all certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, COMPANY shall furnish CITY of Morgan Hill with redacted copies of policies applicable to claim or legal action. No policy subject to COMPANY's Agreement with City shall be reduced, canceled, allowed to expire, or its liability limits and coverages altered except after endeavoring to provide thirty (30) days' notice by the insurer to City, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to City. A "material change" is a change that results in non-compliance with any insurance requirements in this section 8. Certificates, including renewal certificates, may be

mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address as follows:

City of Morgan Hill  
Attn: Risk Management  
17575 Peak Avenue  
Morgan Hill, CA 95037

## EXHIBIT C

### SB 1383 RELATED MATTERS

**Defined Terms.** This Exhibit uses certain terms defined in Section 18982 of the Final SB 1383 Regulations issued in November 2020 (the "Final Regulations"). For ease of reference, when such terms are used herein, they are generally capitalized. Unless otherwise defined in this Agreement or unless the context otherwise requires, as used in this Exhibit, terms defined in said Section 18982 shall carry the meanings set forth therein.

**Compliance Method.** The following SB 1383 requirements assume the use of a "standard" compliance approach in accordance with the Final Regulations. For information purposes only, and without intending to modify City or Contractor's obligations under this Agreement or applicable law, it is understood between the parties that a "standard" compliance approach means an approach to compliance other than a Performance-Based Approach pursuant to Section 18998.1 of the Final Regulations, so that the city shall not be entitled to compliance exemptions under Section 18998.2 of the Final Regulations.

City and Contractor agree to meet and confer as needed to discuss changes to Contractor's operations related to Exhibit C as necessary or appropriate to meet CalRecycle's expectations for compliance with SB 1383. If the changes to the Contractor's operations entail additional costs or require additional services to be provided, Contractor and City shall mutually agree on the compensation to be provided to Contractor in advance of Contractor's implementation of such change.

During the Term of this Agreement, City may elect to pursue a "performance-based Source Separated collection service" approach in accordance with Section 18998.1 as set forth in the Final Regulations. In general terms, based on the Final Regulations, the performance-based compliance approach would require provision of at least three Containers for Source Separated Collection of Discarded Materials to ninety percent (90%) of Residential Customers and to ninety percent (90%) of Commercial Customers, while reducing some requirements for the City and the Contractor, as described in Section 18998.2. The performance-based compliance approach places significant added responsibility on Processors; Contractor would coordinate with the Approved Facility(ies) as necessary to ensure Organic Materials and Recyclable Materials are provided in a form that allows for Processing in accordance with the Final Regulations. Contractor would also coordinate with the Approved Facility(ies) as necessary to ensure Solid Waste characterization studies can be conducted in accordance with the Final Regulations. Should the City elect to pursue such a performance-based compliance approach, the City Contract Manager and Contractor shall meet and confer at least one (1) year prior to the implementation of the performance-based approach. Notwithstanding the foregoing or any other provision, Contractor shall not be required to implement the performance-based approach or any related services unless and until the parties mutually agree in writing as to the specific obligations Contractor is to perform and the compensation to Contractor for the same.

**Key SB 1383 Staff.** Contractor shall hire three (3) half time fully qualified individuals for the new Contractor staff positions of SB 1383 Compliance Specialist, Outreach and Education Specialist, and Hauler Route Reviewer(s). The SB 1383 Compliance Specialist and Outreach and Education Specialist shall have primary responsibility for planning and executing all compliance, outreach, issuance of communication and follow-up levels, and technical assistance activities necessary to ensure successful implementation of all SB 1383-related requirements of Contractor set forth in this Agreement, including managing the work of any technical assistance Subcontractors hired by Recology at Recology's sole discretion, as applicable, and ongoing close coordination with the City Contract Manager and their designees.

## **Section 1. SB 1383 Inspections and Follow-Up**

**General.** Contractor shall perform Customer Compliance Reviews and Complaint Investigations as described in this Section commencing as soon as practicable after the Effective Date of the contract and no later than June 30, 2023, and at least annually thereafter, unless otherwise noted.

### **1.1 Commercial Generator Desktop Compliance Reviews**

Contractor shall complete a compliance review of all Multi-Family and Commercial Customers that subscribe for two (2) cubic yards or more per week of Solid Waste, including Organic Materials, to determine whether they:

- (i) are subscribed for Organic Materials collection service and/or Recyclable Material collection service, as applicable,
- (ii) have an applicable waiver,
- (iii) have notified Contractor in writing that they are in compliance with the Self-Hauling requirements set forth in Section 18988.3 of the Final Regulations and the Morgan Hill City Code, including whether such Commercial Customer is complying through Back-Hauling Organic Materials, or
- (iv) have indicated on their waiver application or in a separate writing to Contractor that a hired landscaper hauls their organic waste and that organic waste generation post-hauling is below the organics recycling subscription threshold (in which case they need to apply for a De Minimis Waiver, see Section 6.1).

Commercial Generator Desktop Compliance Reviews shall consist of a "desk" review of records to determine Customers' compliance with the above requirements and does not require on-site observation of service.



1.2 Annual Hauler Route Reviews

Beginning as soon as practicable after the Effective Date of the contract and no later than June 30, 2023, and annually thereafter, the Contractor shall initiate annual Hauler Route Reviews of Commercial, Multi-Family, and Single-Family customers in accordance with the terms set forth in Section 2 of this Exhibit C.

1.3 Food Recovery Compliance Reviews

The City anticipates fulfilling the City's obligations to address edible food recovery through its participation in regional programs coordinated by other entities. Contractor acknowledges that the collection of and regulatory activities addressing recoverable edible food that are contemplated by the SB 1383 regulations are outside of the exclusive rights City grants to Contractor in this Agreement. Should these other programs fail to adequately address the City's obligations for edible food recovery, City and Contractor may discuss expanding Contractor's activities in order to fulfill City's regulatory obligations. Should the City and Contractor mutually elect to utilize Contractor's services to support the Food Recovery Program, Contractor may recover its reasonable and necessary costs for performing these services as EXCEPTIONAL COSTS in its rate application for the year following provision of the services.

1.4 Complaint Investigations for SB 1383-Noncompliance

- A. **Reporting to City.** Prior to commencement of investigation of complaints received in which a Person alleges that an entity is in violation of SB 1383 requirements, Contractor shall provide a brief complaint report to the City Contract Manager for each SB 1383-noncompliance complaint within five (5) Working Days of receipt of such complaint.
- B. **Investigation.** Contractor shall assist City in meeting its obligation to investigate written and oral complaints by commencing an investigation within ten (10) business days of receiving a complaint in the following circumstances: (i) upon Contractor receipt of a complaint that an entity may not be compliant with SB 1383; and (ii) upon City Contract Manager request to investigate a complaint received by City. Contractor is required to investigate complaints against Customers only, and not against Edible Food recovery organizations, Edible Food recovery services, and other entities regulated by SB 1383, and is only required to investigate complaints related to services provided by Contractor.

Contractor shall investigate the complaint by:

- i) Reviewing the Service Level of the Customer; Reviewing the waiver list, if applicable, to determine if the entity has a valid, City-approved de minimis, space constraint, or Collection frequency waiver;
- ii) Reviewing the Self-Haul customer list, if applicable, to determine if the customer is on the list;
- iii) Contacting the entity to gather more information and inspecting Premises of the entity identified by the complainant, if warranted;
- iv) If non-compliance is confirmed during the process of investigation, then the Contractor shall proceed through the levels of communication and follow-up detailed below in Section 1.5 (A) or (B) as applicable.

**C. Documentation of Complaints.** The Contractor shall enter all complaints received or investigated by Contractor as required in the Contractor Implementation Record including an electronic investigation complaint log that documents the Customer account in question, the nature of the complaint, the investigation performed, dates of outreach conducted and/or communication and follow-up levels issued per Section 1.5 (A) or (B), as applicable, whether or not the customer investigated was found to be in violation of SB 1383, and the final resolution. This information shall be available to the City Contract Manager as described in Section 8, *Reporting*, below.

#### 1.5 Communication and Follow-Up for Desktop Compliance Reviews and Complaint Investigations

**A. Non-Compliant Entities through December 31, 2023.** When compliance reviews or complaint investigations are performed by Contractor, Contractor shall provide City-approved educational materials where Contractor has determined a Customer is either not properly subscribed for service based on the results of a Commercial Generator Desktop Compliance Review, where Contractor has identified Prohibited Container Contaminants during the performance of a Hauler Route Review (as described in Section 2), or if a Complaint Investigation confirms a violation. Contractor shall provide these educational materials to the non-compliant Customers within two (2) Working Days of determination of any non-compliance discovered as a result of a Commercial Generator Desktop Compliance Review or Complaint Investigation or immediately upon identification of Prohibited Container Contaminants during a Hauler Route Review.

**B. Communication and Follow-Up for Commercial Generator Desktop Compliance Reviews and Complaint Investigations Beginning January 1, 2024.**

If a Commercial Generator Desktop Compliance Review leads to the determination that a customer is not properly subscribed for service, or if a Complaint Investigation confirms a violation then Contractor shall proceed through the levels of communication and follow-up including:

- i) issuance of a Notice of Referral to the City requiring compliance within 40 days of the issuance of that notice, to be issued within two (2) Working Days of determination of non-compliance, accompanied by outreach and educational materials;
- ii) issuance of a 25-day warning letter that reiterates the non-compliance issue, action items, and deadline for compliance;
- iii) issuance of a 10-day warning letter that reiterates the non-compliance issue, action items, and deadline for compliance; and
- iv) referral to City if non-compliance issue remains unresolved after 45 days of determination of non-compliance.

For the purpose of this document, the Notice of Referral to City is defined as a notice that a violation has occurred that includes a compliance date for the non-compliant customer to avoid an action by City to seek penalties.

When a violation is referred to the City, the Contractor shall provide the following information at the time of referral: Customer's account information, the nature of the violation, then-current Service Level, Contractor's efforts to resolve the violation to-date, and any other documentation that may be useful to the City as they escalate communication and follow-up to enforcement that may include penalties and fines.

**C. Documentation of Communication and Follow-Up.** City Contract Manager shall be immediately notified of contamination or compliance issues when it will result in a Referral to the City by the Contractor. This will provide an opportunity for the City to witness contamination and take photo documentation.

Contractor shall keep up-to-date records and documents required in the Contractor Implementation Record including Customers and Generators with SB 1383 violations, the type of educational materials provided, levels of communication and follow-up issued, and the resolution, along with dates the outreach and/or levels of communication and follow-up were issued. This information shall be available to the City Contract Manager per the requirements of Section 8, *Reporting*, below.

## **Section 2. Hauler Route Review Methodology / SB 1383 Contamination Minimization Program**

Contractor shall assist in minimizing Contamination by helping to educate Customers on acceptable and non-acceptable materials, by monitoring the contents of Collection Containers, and by refusing to Collect Containers with visible Prohibited Container Contaminants.

Commencing with the Effective Date of the contract, Contractor shall hire staff or a consultant to complete the Hauler Route Reviews in accordance with the procedures described in this Section (Section 2). The Hauler Route Reviews shall be completed no later than December 31 of each year of the Agreement. The Contractor shall conduct Hauler Route Reviews for Prohibited Container Contaminants in Containers in a manner that is deemed safe by the Contractor and is conducted in a manner that results in all Hauler Routes being reviewed annually. Annual Hauler Route Reviews shall be conducted in accordance with the Annual Hauler Route Review Methodology set forth in this section. The following reflects the original methodology as established at the effective date of this agreement. Contractor and City shall annually review and amend the methodology as needed to ensure SB 1383 compliance, and any change in methodology agreed to shall be documented in writing and shall be deemed to be incorporated herein by this reference.

### **2.1 Annual Hauler Route Review Methodology**

At least once annually, Contractor shall conduct a Route Review for each Hauler Route. A Hauler Route is the designated weekly itinerary or sequence of stops scheduled to be performed by one collection vehicle providing regularly scheduled Solid Waste, Recyclable Material or Organic Material collection services (not on-call or Bulky Item Collection Program services) within the service area.

For each Route Review, the Contractor shall visually inspect the contents of the number of Containers set forth below. Each inspection shall involve observing the contents of the Container (whether by lifting the lid, using a camera, or other method deemed appropriate by Contractor), but shall not require Contractor to disturb the contents or open any bags. The Containers shall be randomly selected by a method approved by the City Contract Manager. For the avoidance of doubt, Contractor shall not be required to annually inspect every Container on a Hauler Route.

If Contractor finds Prohibited Container Contaminants in a Container during a Route Review, Contractor shall notify the customer of the violation in writing by following the communication and follow-up levels described below in Section 2.3. Contractor may dispose of the contents of any Container found to contain Prohibited Container Contaminants.

## 2.2 Number of Inspections

Containers on Hauler Routes shall be inspected consistent with the Table shown below. Contractor may if it wishes, but shall not be required to, inspect more than the number of Containers identified in the table. Contractor's practice shall be to only inspect one Container per customer service location per Route Review (e.g., 40 Containers = 40 locations). Contractor may inspect more Containers per location if Contractor wishes, but those additional Containers shall not count towards the number in the table.

<u>Route Size (# accounts serviced per week)</u>	<u>Number of Containers to be Inspected per Hauler Route in City's Collection service area</u>
Less than 1,500	25
1,500-4,000	30
4,001-7,000	35
7,001 or more	40

City reserves the right to require additional inspections if the City determines that the amount of inspections conducted by the Contractor is insufficient. City may require the Contractor to prioritize inspections of entities that the City determines are more likely to be out of compliance. Contractor shall be entitled to recover its reasonable and necessary costs for performing any additional inspections as EXCEPTIONAL COSTS in its rate application for the year following provision of the services.

## 2.3 Communication and Follow-Up for Hauler Route Reviews

If Prohibited Container Contaminants are discovered during a Hauler Route Review, then Contractor shall proceed through the levels of communication and follow-up immediately upon determination of non-compliance, including:

- i. issuance of a Courtesy Notice with Educational Materials for containers with <10% contamination by volume; and
- ii. issuance of a Notice of Non-Collection with Educational Materials for containers with >10% contamination by volume, in addition to a Return Trip Fee and, if applicable, an additional Garbage Collection Fee as described in Section 2.5.



## 2.4 Documentation of Hauler Route Reviews

The Contractor shall maintain documentation for each Hauler Route Review conducted. The documentation shall include all records and documents relating to Hauler Route Reviews that are required to be included in the Contractor Implementation Record, including noncompliant account numbers, locations of contamination issues, date of identified contamination, summary of findings, notifications/education issued, number of containers on route, and number of containers inspected. The foregoing information shall be available to the City Contract Manager per the requirements of Section 8, *Reporting*, below.

Contractor shall permit observation of Route Reviews by the City. In addition, Contractor shall upon request by City provide email notice to the City's Contract Manager of the upcoming scheduled Hauler Route reviews that includes the specific time(s) and location(s).

## 2.5 Assessment of Contamination Fees/Return Trip Fee

No sooner than one hundred twenty (120) days following the Commencement Date, Contractor and City shall meet and confer to discuss potential use of Contamination Fees for Customers that do not properly sort their Discarded Materials. In the event Contractor leaves a Customer a non-collection notice as a result of contamination, Contractor shall return to Customer Premises to Collect Contaminated materials as garbage and charge a return trip fee and, if applicable, additional garbage collection fee.

## 2.6 Communications with Customers

Contractor shall be the primary contact with customers for the communication and follow-up set forth in Section 1.3 of this document.

## 2.7 Disposal of Contaminated Materials

Contractor may Dispose of Contaminated materials observed in Customer's Organic Materials Container or Recyclable Materials Container.

## 2.8 Reporting Requirements

Contractor shall maintain records and report to the City Contract Manager on Contamination monitoring activities and actions taken as required per the Contractor Implementation Record. This information shall be available to the City Contract Manager per the requirements of Section 8, *Reporting*, below.

## Section 3. SB 1383 Container Requirements

To ensure continued compliance with SB 1383 Container color and labeling requirements, and in coordination with any related activities that occur prior to the Commencement Date, Contractor shall confer with the City Contract Manager prior to placing any orders for, purchasing, taking delivery of, and/or utilizing any new Containers when there are material changes in the cart style, sizes, labels, colors, etc.

### 3.1 Color Standards

Contractor shall provide Collection Containers to customers that comply with color requirements when replacing containers with any containers that have been newly purchased by Contractor. Colors shall be green for organic wastes, blue for recycling, and grey for landfill waste. Containers provided to customers starting service shall conform to the above color scheme. Recology and City shall agree to work collaboratively on Debris Box color standards and labeling.

### 3.2 Labeling Requirements

**Imprinted or In-Mold Labels for New Containers.** Commencing with the Effective Date of the contract, all new Containers provided by the Contractor that are purchased by Contractor shall be imprinted with text or graphic images that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering any Containers or lids with in-mold labels, Contractor shall submit a sample of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to the Contract Manager for approval.

## Section 4. Food Recovery Program

The City anticipates fulfilling the City's obligations to address edible food recovery through its participation in regional programs coordinated by other entities. Contractor acknowledges that the collection and regulatory activities addressing recoverable edible food that are contemplated by the SB 1383 regulations are outside of the exclusive rights City grants to Contractor in this Agreement. Should these other programs fail to adequately address the City's obligations for edible food recovery, City and Contractor may discuss expanding Contractor's activities in order to fulfill City's regulatory obligations. Should the City and Contractor mutually elect to utilize Contractor's services to support the Food Recovery Program, Contractor may recover its reasonable and necessary costs for performing these services as EXCEPTIONAL COSTS in its rate application for the year following provision of the services.

## **Section 5. Education and Outreach**

All program related education and outreach materials designed by Recology and in collaboration with the City and distributed by the Contractor in compliance with the requirements of the Agreement, shall be translated into Spanish. This includes both printed materials and digital outreach including social media posts, website, etc. All program related education and outreach efforts designed by Recology and in collaboration with the City shall be documented for inclusion in the Contractor Implementation Record including number of people reached, type of message delivered, distribution type, etc.

## **Section 6. SB 1383 Generator Waiver Program Coordination**

The following SB 1383 waivers are defined in Section 18984.11 as set forth in the Final Regulations, for implementation, individually or collectively, at City discretion. Should the City elect to allow one or more Generator waivers pursuant to SB 1383, Contractor shall coordinate with City as necessary to comply. Contractor understands and accepts that Contractor's scope of services, and provision of services may be affected by City grant of waivers.

Contractor shall cooperate with and coordinate with the City regarding verification of eligibility for waivers in accordance with the following steps: 1) Contractor shall respond to Customers requesting De Minimis or Physical Space waivers and provide the Customer with the appropriate City application form; 2) Contractor shall verify the information provided by the customer on the application, and submit to the City for review; 3) City reviews waiver application materials, approves or declines the waiver application, and returns to Contractor the completed application form that has been updated with City's approval or denial of the waiver for Contractor to distribute to Customer; 4) Contractor provides Customer with completed application form that indicates City's approval or denial of the waiver application; 5) Contractor maintains an up-to-date list in the Contractor Implementation Record of Customers that have been granted waivers by City; and 6) at least every five years from the date of issuance, Contractor shall verify that commercial businesses are still meeting requirements of granted de minimis and physical space waivers. All parts of the waiver issuance process shall be recorded on one form including Customer application, Contractor verification, and City approval/denial.

Contractor shall verify information included in waiver applications in the following manner and indicate findings on the application form:

- i. For Physical Space Waiver applications, Contractor will verify whether the Container storage area(s) at the service address are in Contractor's opinion sufficient to add a Recyclable Materials and/or Organic Materials container (whichever one(s) the Customer is seeking a physical space waiver for). "Container storage area" means a contiguous area designated by the Customer for storage of Refuse, Recyclable Materials, and/or Organic Materials Containers.

- ii. For De Minimis Waiver applications, Contractor will verify the estimated weekly volume of Organic Materials and/or Recyclable Materials generated by the Customer and discarded in the Solid Waste Containers at the service address. The estimate shall be based on a single visual inspection of the contents of Container(s) at the service address. Each inspection shall involve observing the contents of the Container(s) by the method deemed appropriate by Contractor but shall not require Contractor to disturb the contents or open any bags.

#### 6.1 De Minimis Waivers (Three-Container Systems)

The City may elect to waive a Commercial Customer's obligation to comply with some or all of the Recyclable Materials and Organic Materials requirements as set forth in this Agreement, pursuant to SB 1383, and in the Municipal Code if the Commercial Customer provides documentation or the City has evidence demonstrating one of the following de minimis conditions:

- i) The Commercial Customer's total Solid Waste Collection service is two (2) cubic yards or more per week, and its Organic Materials or Recyclable fibers comprises less than twenty (20) gallons per week of organic waste subject to collection, per applicable Container, of the Commercial Business' total waste; or,
- ii) The Commercial Customer's total Solid Waste Collection service is less than two (2) cubic yards per week, and its Organic Materials or Recyclable fibers comprises less than ten (10) gallons per week of organic waste subject to collection, per applicable Container, of the Commercial Business' total waste.

When a Customer submits an application for a De Minimis Waiver and the Customer indicates on their application that a landscaper hauls away green waste, Contractor shall collect contact information from the Customer's application for the landscaping company that is removing the organic waste from the site and provide that information to the City as part of the De Minimis Waiver application.

#### 6.2 Physical Space Waivers

The City may elect to waive a Commercial Customer's or Property Owner's obligation to comply with some or all of the Recyclable Materials or Organic Materials Collection service requirements as set forth in this Agreement, pursuant to SB 1383, and in the Morgan Hill City Code if the Commercial Customer or Property Owner provides documentation, or the City has evidence from its staff, the Contractor, licensed architect, engineer, or similarly qualified source demonstrating that the Premises lacks adequate space for Recyclable Materials and/or Organic Materials Containers. Should the City elect to grant such physical space waivers, Multi Family Customers that do not have sufficient space to comply with some or all of the Organic Materials Collection service

requirements set forth in this Agreement may be required to Self-Haul Organic Materials to the Approved Facility, subject to Applicable Law.

### 6.3 Collection Frequency Waivers

The City may elect to allow the Contractor to provide Collection of Solid Waste once every fourteen (14) days, rather than once per week, for Customers that have been granted a Collection frequency waiver from the City.

### 6.4 Contractor Recordkeeping of Generators Granted Waivers

Contractor shall maintain waiver-related records identified on the Contractor Implementation Record and report on waiver verifications per the requirements of Section 8, *Reporting*, below.

## Section 7. SB 1383 Procurement Requirements

Contractor's responsibilities regarding compost procurement arrangements are identified in Recital I and Section 5.J of the Agreement. Contractor shall be proactive in evaluating commercially available SB 1383-compliant vehicle fuel for use in Contractor vehicles.

## Section 8. Record Keeping

Contractor shall supply City with the following categories of complete and up-to-date records as required in the Contractor Implementation Record:

- Route Reviews
- Waivers and Exemptions
- Education and Outreach
- Compliance Reviews
- Complaint Investigation
- Edible Food Recovery (if Recology support of Food Recovery Program becomes needed)
- Contamination Minimization (in event of a switch to Performance-Based Approach)

Contractor and City shall mutually agree on the format of all forms required as part of the Contractor Implementation Records, as well as the setup of the electronic folder system where all forms shall be stored in the agreed-upon folders. As of the date of this Agreement, the City and Contractor agree that the accompanying documentation shall be organized into the appropriate files as identified in the Contractor Implementation Record, once the format and contents are mutually agreed upon by Contractor and City as stated above.

Contractor shall enter required data into the Contractor Implementation Record and save corresponding documentation in the agreed-upon Filing System within five (5) business days of



any change affecting data within any required reporting category and within one (1) business day of notification from CalRecycle request to review implementation record. All information shall be entered into a shared electronic platform that meets data security and confidentiality criteria agreed upon by Contractor and City.

## **EXHIBIT D DESIGNATED FACILITIES**

As of July 1, 2022, the designated facilities for disposal or processing of Solid Waste Matter are as follows:

- (i) Solid Waste shall be disposed of at John Smith Road Landfill in Hollister, California or another facility designated by Waste Solutions Group of San Benito, LLC in accordance with the CITY's disposal agreement.
- (ii) Recyclable Material shall be transferred at COMPANY's San Martin Transfer Station and then processed at GreenWaste Recovery in San Jose, California or other facilities determined by COMPANY.
- (iii) Organic Material shall be processed at COMPANY's affiliate's South Valley Organics facility in Gilroy, California.
- (iv) Construction and Demolition Debris shall be processed at Pacific Coast Recycling in Gilroy, California or other facilities determined by COMPANY.

## **EXHIBIT E**

### **COMMUNITY EDUCATION AND OUTREACH**

#### CORE REQUIREMENTS

Recology's outreach in Morgan Hill will be comprised of the items listed below. All printed materials, web and other content will have cohesive appearance. The Recology corporate branding will serve as the default, except in cases where the City and Recology have agreed on a different visual theme.

All materials will be provided in English and Spanish and/or using universal imagery or symbols.

The organics stream will be included and at times emphasized to assist the City with SB 1383 compliance.

#### Strategic Outreach Plan

In collaboration with City staff, Recology will create a Strategic Outreach Plan will be created in Year 1 of the contract that will guide the overall approach and major deliverables. The Plan will be updated on an annual basis by Recology, in collaboration with City staff.

#### Website

COMPANY will update the existing website upon initiation of the new Agreement. Subsequent updates will be made over the duration of the Agreement.

#### Recycling Guide

A guide will be distributed to all three customer types (Commercial, Multifamily, and Residential) at the beginning of each calendar year. The guide will provide "how-to" information for all three streams (Waste, Recycling, and Organics), using text and helpful images. In addition, the guide will contain helpful information about the bulky item pick-up program and safe disposal of household hazardous waste, sharps, prescription drugs, and other hard-to-dispose items.

#### New Start Packets

New Start Packets will be designed for each customer segment, and will contain the following collateral:

##### **Residential**

- Welcome letter with customer service, billing and other basic information.
- Residential Recycling Guide

- Calendar indicating recycling and street sweeping information

#### Multifamily

- Welcome letter
- Multi-family Recycling Guide
- In-unit “buddy bags” to assist residents with transport of recyclables to the common recycling area(s) or chutes. Buddy bags will depict program information and Recology’s contact information.

#### Commercial

- Welcome letter
- Commercial Recycling Guide
- Supply sheet with information on how to request sorting posters, internal containers, etc.

#### Quarterly Communications

Quarterly communications to customers may include the following methods, as determined jointly by the City and Recology:

- Print newsletter
- Electronic newsletter
- Bill insert/flyer, printed
- Bill insert/flyer, electronic
- Direct-mail, such as letters or postcards
- Social Media
- Other collateral, as agreed upon by the City and Recology

#### Technical Assistance

Recology will provide technical assistance to the following customer types:

##### Commercial

- Recology staff will work to enroll all eligible businesses, institutions, and other commercial customers for all three streams.
- Recology will provide trainings to staff to help them engage in their programs and properly sort material.
- Recology will offer tailored outreach to specific commercial sectors and accounts, focusing on contamination reduction and increased diversion.

##### MFD

- Recology staff will work to enroll all multi-family complexes in all three streams.
- Recology staff will provide trainings to building managers, custodial staff, and other stakeholders.

- Recology will offer tailored outreach to specific multi-family complexes, focusing on contamination reduction and increased diversion.

#### Schools/Youth

- Recology will give presentations to schools and closely affiliated groups.



## **EXHIBIT F STREET SWEEPING**

(a) Scope of Services.

(i) Contractor shall perform street sweeping operations using appropriate vehicles on all designated City streets, as identified by the City and approved by the Contractor, no less frequently than once every two weeks, weather permitting, except as provided below.

(ii) Contractor shall perform street sweeping operations using appropriate vehicles in City business districts and on arterial streets, as identified by the City and approved by the Contractor, no less frequently than once per week, weather permitting.

(iii) Contractor shall perform street sweeping operations using appropriate vehicles on the parking lots at City Facilities (as designated on Exhibit G), no less frequently than once every two weeks, weather permitting.

Notwithstanding the foregoing or anything else in this agreement, Contractor shall not be required to perform street sweeping operations on any street, parking lot, or portion thereof that Contractor determines is unsafe or poses a threat of damage to Contractor's equipment.

(b) Performance Requirements.

(i) Contractor will provide sufficient equipment to guarantee uninterrupted service to City, at Contractor's sole cost and expense. Contractor shall maintain the equipment in good repair and operating condition and shall provide all fuel, lubricants, tires, and all materials and supplies for the operation thereof.

(ii) Contractor, at its sole cost and expense, shall furnish competent personnel to operate all equipment and such other employees as required to furnish adequately the service required in this Section and will further comply with the following:

- In the performance of the street sweeping services described in this Exhibit F, Contractor agrees to comply with all requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code as they are directly applicable to such services, including requirements pertaining to wages, working hours and workers' compensation insurance.
- Contractor shall take cognizance of the prevailing wage requirements set forth in California Labor Code Sections 1720, et seq. and 1770, et seq. applicable to certain "public works" and Maintenance" projects and that the performance of the street sweeping services described in this Agreement is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

- Contractor shall not enter into a contract with a subcontractor for the performance of the street sweeping services described in this Exhibit F unless the subcontractor is registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.

(iii) Contractor shall be solely responsible for disposal of all sweepings collected by Contractor in the performance of services pursuant to this Section.

(iv) Contractor shall not be required to perform street sweeping in any new subdivision or development in the City until the public improvements of the subdivision or development have been accepted by the City.

(v) Contractor shall be provided with access and the materials necessary to obtain water from City water hydrants and shall be allowed to use such water as necessary to perform duties under this Section free of charge.

(c) Service Exclusions. Contractor and City agree that the street sweeping performed by Contractor pursuant to this Agreement shall be limited to the collection and disposal of routine debris from streets. For the avoidance of doubt, Contractor is not required to perform the following:

(i) Street sweeping to clear debris from public emergencies and traffic accidents; and

(ii) The clearing of hazardous waste.

**EXHIBIT G**  
**SERVICES TO CITY FACILITIES**  
(as of December 1, 2022)

CORPORATION YARD  
COMMUNITY PARK  
CIVIC CENTER - COUNCIL CHAMBER  
EL TORO FIRE STATION  
DUNNE HILL FIRE STATION  
VILLA MIRAMONTE/MORGAN HILL HISTORICAL SOCIETY  
COMMUNITY CULTURAL CENTER  
MORGAN HILL POLICE DEPARTMENT  
MORGAN HILL OUTDOOR SPORTS CENTER  
CIVIC CENTER - CITY HALL  
GALVAN PARK  
MORGAN HILL OUTDOOR SPORTS CENTER  
MORGAN HILL COMMUNITY GARDEN  
AQUATICS CENTER  
PARKING GARAGE  
PLAYHOUSE  
CITY STREET CANS