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5 **SECTION 6 COLLECTION SERVICES AGREEMENT**

6 (Throughout this document there are various instances where the type of service will be  
7 dependent on the final award by the CITY, in many of those instances we have used the term  
8 *(to be inserted)* to indicate that specific information will be inserted after the service types and  
9 Service Districts are awarded)

10 **CITY OF SAN JOSE**

11 This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_  
12 \_\_\_\_\_, 20\_\_\_\_, by and between the City of San Jose , a municipal corporation of the  
13 State of California, hereinafter referred to as "CITY" and \_\_\_\_\_  
14 \_\_\_\_\_ a California corporation, hereinafter referred to as "CONTRACTOR".

15 Now, therefore, in consideration of the mutual covenants, agreements and  
16 consideration contained herein, the CITY and CONTRACTOR hereby agree as hereinafter set  
17 forth:

18 **ARTICLE 1. DEFINITIONS**

19 For the purpose of this Collection Services Agreement, hereinafter referred to as  
20 "Agreement", the definitions contained in this Article shall apply unless otherwise specifically  
21 stated. If a word or phrase is not defined in this Article, the definition of such word or phrase  
22 as contained in Chapter 9.10 of the San Jose Municipal Code shall control. When not  
23 inconsistent with the context, words used in the present tense include the future, words in the  
24 plural include the singular, and words in the singular include the plural. Use of the masculine  
25 gender shall include the feminine gender.

26 1.01 Acceptable Residue. The small particles of grass clippings and leaves that  
27 remain on the street after the Yard Trimmings have been Collected. Acceptable Residue shall  
28 be of a size that cannot be Collected with the Yard Trimming claw truck and shall meet the  
29 guidelines promulgated by the Director of Environmental Services.

30 1.02 Agreement. The written document and all amendments thereto, between the  
31 CITY and the CONTRACTOR, governing the provision of Collection Services as provided  
32 herein.

33 1.03 Agreement Year. The twelve (12) month period from July 1 to June 30.

34 1.04 Biohazardous or Biomedical Waste. Any waste which may cause disease or  
35 reasonably be suspected of harboring pathogenic organisms; included are waste resulting  
36 from the operation of medical clinics, hospitals, and other facilities processing wastes which  
37 may consist of, but are not limited to, human and animal parts, contaminated bandages,  
38 pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical  
39 gloves.

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40           1.05 BMP Guidelines for Non-Point Source Pollutants. *Storm Water Best*  
41 *Management Practices Handbook for Industrial Commercial* available at Blueprint Services,  
42 1700 Jefferson St., Oakland, CA 94612.

43           1.06 Brown Goods. Electronic equipment such as stereos, televisions, computers,  
44 VCR's and other similar items.

45           1.07 Business(es). All retail, professional, wholesale and industrial facilities and any  
46 other commercial enterprises offering goods or services to the public.

47           1.08 Business Service Unit. Any Business located in a Mixed Use Dwelling that  
48 elects to utilize SFD or MFD Collection Services.

49           1.09 Central Business District (CBD). The Central Business District as described in  
50 San Jose Municipal Code Section 9.10.1500 and as set forth in Exhibit 9, which is attached to  
51 and incorporated in this Agreement.

52           1.10 CITY. The City of San Jose, California.

53           1.11 City Representative. That person, or their designee, designated by the CITY to  
54 administer and monitor the provisions of this Agreement.

55           ~~1.12 Civic Solid Waste. Garbage and Rubbish resulting from the normal activities of a~~  
56 ~~Large Civic Service Unit.~~

57           ~~1.131.12 Civic Solid Waste Collection Service. The Collection of Civic Solid Waste~~  
58 ~~from Large Civic Service Units in the Service District through the use of Roll-Off Containers.~~

59           ~~1.141.13 Civic Yard Trimmings. Yard Trimmings that have been generated by Large~~  
60 ~~Civic Service Units and other CITY lands within the Service District.~~

61           ~~1.151.14 Civic Yard Trimmings Collection Service. The Collection, processing and~~  
62 ~~marketing of Civic Yard Trimmings.~~

63           ~~1.161.15 Collection. The process whereby Residential Waste, Civic Solid Waste,~~  
64 ~~Yard Trimmings, Civic Yard Trimmings, Sweep Waste, and Recyclable Materials are removed~~  
65 ~~and transported to a Disposal Facility, Yard Trimmings Processing Facility or Materials~~  
66 ~~Recycling Facility as appropriate.~~

67           ~~1.171.16 Collection Services. SFD Collection Service, MFD Collection Service, Yard~~  
68 ~~Trimmings Collection Service, Civic Yard Trimming Collection Service, and Residential Street~~  
69 ~~Sweeping Service.~~

70           ~~1.181.17 Compactor. Any Roll-Off Container which has a compaction mechanism,~~  
71 ~~whether stationary or mobile.~~

72           ~~1.191.18 Contaminant. Any material not normally produced from gardens or~~  
73 ~~landscapes such as, but not limited to, brick, rocks, gravel, large quantities of dirt, concrete,~~

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74 sod, non-organic wastes, oil and wood or wood products, including but not limited to, stumps,  
75 diseased elms, and other diseased trees.

76 4.201.19 CONTRACTOR. That person or entity that has obtained from the CITY an  
77 Agreement to provide Collection Services as set forth herein.

78 4.211.20 County. Santa Clara County, California.

79 4.221.21 Curb Mile. All curbs located along one side of a street for a distance of one  
80 mile as measured by the CITY. Distances along Median Islands are not considered Curb  
81 Miles.

82 4.231.22 Curb Sweeping. A complete sweep of all curbs and Median Islands but not  
83 traffic islands on all publicly maintained Residential Streets located within the Service District

84 4.241.23 Disposal Facility. The Newby Island Landfill, located at 1606 Dixon Landing  
85 Road, San Jose, CA or such place or places specifically designated by the CITY for the  
86 disposal, or processing as appropriate, of Residential Solid Waste and other materials.

87 4.251.24 Dwelling Unit. Any individual living unit in a single family dwelling (SFD),  
88 multi-family dwelling (MFD), or Mixed-Use Dwelling (MUD) structure or building intended for, or  
89 capable of being utilized for, residential living other than a Hotel or Motel unit.

90 4.261.25 Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste,  
91 Sludge, Stable Matter, Yard Trimmings or lumber that is more than five (5) feet in length in its  
92 longest dimension or two (2) feet in diameter, automobiles, automobile parts, boats, boat parts,  
93 boat trailers, internal combustion engines, lead-acid batteries, and those wastes under the  
94 control of the Nuclear Regulatory Commission.

95 4.271.26 Garbage. All putrescible waste which generally includes but is not limited to  
96 kitchen and table food waste, animal, vegetative, food or any organic waste that is attendant  
97 with, or results from the storage, preparation, cooking or handling of food materials attributed  
98 to normal activities of a Service Unit. Garbage must be generated by and at the Service Unit  
99 wherein the Garbage is Collected. Garbage does not include those items defined herein as  
100 Exempt Waste.

101 4.281.27 Garbage Carts. A heavy plastic receptacle with a rated capacity of at least  
102 32 and not more than 96 gallons, having a hinged tight-fitting lid and wheels, that is approved  
103 by the City Representative for use by Service Recipients for SFD Solid Waste Collection  
104 Services under this Agreement. The specifications for Garbage Carts are set forth In Exhibit 5,  
105 which is attached to and incorporated in this Agreement.

106 4.291.28 Garbage Bin. A metal or plastic container, with a capacity of one (1) cubic  
107 yard up to and including eight (8) cubic yards, designed or intended to be mechanically  
108 dumped into a loader packer type garbage truck, that is approved for such purpose by the  
109 CITY. Garbage Bins may also include ~~twenty (20) cubic yard~~ Compactors that are owned by

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110 the MFD Service Unit wherein the MFD Collection occurs. The specifications for Garbage Bins  
111 to be provided under the terms of this Agreement are set forth in Exhibit 6, which is attached to  
112 and incorporated in this Agreement.

113 | 4.301.29 Hazardous Waste. Any material which is defined as a hazardous waste  
114 under California or United States law or any regulations promulgated pursuant to such law, as  
115 such law or regulations may be amended from time to time.

116 | 4.341.30 Hotel or Motel. A structure or building unit(s) capable of being utilized for  
117 residential living where such unit or a group of such units is regularly rented to transients or  
118 held out or advertised to the public as a place regularly rented to transients for periods of  
119 seven (7) days or less. To meet this definition, the Hotel or Motel must be licensed to operate  
120 as such.

121 | 4.321.31 Large Civic Service Unit. Those CITY properties as set forth in Exhibit 8,  
122 which is attached to and incorporated in this Agreement.

123 | 4.331.32 Large Items. Those materials including furniture; carpets; mattresses;  
124 White Goods; Brown Goods; clothing; tires; Large Yard Trimmings; or some combination of  
125 such items in a container the dimensions of which container does not exceed four feet by four  
126 feet by two feet (4'x4'x2') and weighing no more than 60 pounds, which are attributed to the  
127 normal activities customary to ordinary housekeeping operations of a Service Unit. Large  
128 Items must be generated by and at the Service Unit wherein the Large Items are Collected.  
129 Large Items do not include items herein defined as Exempt Waste.

130 | 4.341.33 Large Yard Trimmings. Oversized Yard Trimmings such as tree trunks and  
131 branches with a diameter of not less than six (6) inches and not more than two (2) feet and a  
132 length of not more than five (5) feet in its longest dimension, which are attributed to the normal  
133 activities customary to ordinary housekeeping operations of a Service Unit. Large Yard  
134 Trimmings must be generated by and at the Service Unit wherein the Large Yard Trimmings  
135 are Collected.

136 | 4.351.34 Mandatory Yard Trimmings Cart Collection Service. The Collection,  
137 processing and marketing of Yard Trimmings from a SDF Service Unit, MFD Service Unit, or  
138 Small Civic Service Unit in the Service District that is required by the CITY to utilize a Yard  
139 Trimmings Cart for the set out of Yard Trimmings and the disposal of Yard Trimmings  
140 Processing Residue.

141 | 4.361.35 Materials Recycling Facility (MRF). Any facility designed, operated, and  
142 legally permitted for the purpose of receiving, sorting, processing, storing, or preparing  
143 Recyclable Materials for sale.

144 | 4.371.36 Median Island. A dividing area, normally at curb height, between opposing  
145 directions of traffic not normally located along Residential Streets

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146 ~~4.381.37~~ MFD Collection Service. MFD Solid Waste Collection Service, MFD  
147 Recycling Service, MFD Large Item Collection Service, and MFD Used Oil Collection Service,  
148 ~~and Civic Solid Waste Collection Service.~~

149 ~~4.391.38~~ MFD Large Item Collection Service. The periodic on-call Collection of Large  
150 Items, by the CONTRACTOR, from MFD Service Units in the Service District and the delivery  
151 of those Large Items to a Disposal Facility, Materials Recycling Facility, Yard Trimmings  
152 Processing Facility or such other facility as may be appropriate under the terms of this  
153 Agreement. MFD Large Item Collection Service does not include the Collection of Large Items  
154 through the use of Roll-Off Containers.

155 ~~4.401.39~~ MFD Recycling Service. The Collection of Recyclable Materials, by the  
156 CONTRACTOR, from MFD Service Units in the Service District, the delivery of those  
157 Recyclable Materials to a Materials Recycling Facility and the processing and marketing of  
158 those Recyclable Materials.

159 ~~4.441.40~~ MFD Service Unit. Any combination of Dwelling Units or Business Service  
160 Units in the Service District utilizing a common Garbage Bin for the accumulation and set out of  
161 Residential Solid Waste.

162 ~~4.421.41~~ MFD Solid Waste Collection Service. The Collection of Residential Solid  
163 Waste, by the CONTRACTOR, from MFD Service Units in the Service District and the delivery  
164 of that Residential Solid Waste to a Disposal Facility.

165 ~~4.431.42~~ MFD Used Oil Collection Service. The Collection of Used Oil in Used Oil  
166 Containers, and Used Oil Filters, in Used Oil Filter Containers by the CONTRACTOR, from  
167 MFD Service Units in the Service District utilizing Used Oil and Used Oil Filter Containers for  
168 the accumulation and set-out of Used Oil and Used Oil filters and the appropriate disposition of  
169 the Used Oil and Filters in accordance with the requirements of this Agreement.

170 ~~4.441.43~~ Mixed Use Dwelling. A building or structure which is used for both Business  
171 activities and as a Dwelling Unit.

172 ~~4.451.44~~ Non-Collection Notice. A form used by the CONTRACTOR to notify Service  
173 Recipients of the reason for non-collection of materials set out by the Service Recipient for  
174 Collection by CONTRACTOR pursuant to this Agreement as described in Exhibit 10, which is  
175 attached to and incorporated in this Agreement.

176 ~~4.461.45~~ On-Street Yard Trimmings Collection Service. The Collection, processing  
177 and marketing of Yard Trimmings from a SFD Service Unit, MFD Service Unit or Small Civic  
178 Service Unit that does not utilize a Yard Trimmings Cart for the set-out of Yard Trimmings and  
179 the disposal of Yard Trimmings Processing Residue.

180 ~~4.471.46~~ Rebuilt Vehicle. For purposes of this Agreement, "rebuilt" means, at a  
181 minimum, replacement of worn parts and reconditioning or replacement of hydraulic systems,  
182 transmissions, differentials, electrical systems, engines, and brake systems. In addition, the

183 rebuilt vehicle must be repainted and its tires must have at least eighty-five percent (85%) of  
184 tread remaining.

185 1.481.47 Recyclable Materials. Those materials that are capable of being recycled  
186 and which would otherwise be processed or disposed of as Residential Solid Waste. These  
187 materials will be as defined by the City. Recyclable Materials currently being Collected include:  
188 newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk  
189 mail, corrugated cardboard, Kraft brown bags and paper, paperboard, paper egg cartons,  
190 office ledger paper, and telephone books); glass containers; aluminum beverage containers;  
191 small scrap and cast aluminum (not exceeding forty (40) pounds in weight nor two (2) feet in  
192 any dimension for any single item); steel including "tin" cans and small scrap (not exceeding  
193 forty (40) pounds in weight nor two (2) feet in any dimension for any single item); bimetal  
194 containers; mixed plastics such as plastic bags, plastic film, plastic containers (1-7), and bottles  
195 including containers made of HDPE, LDPE, PET, or PVC; textiles; aseptic containers; and  
196 polystyrene.

197 1.491.48 Recycling Bin. A plastic or metal container, with a capacity of one (1) cubic  
198 yard up to and including eight (8) cubic yards, designed or intended to be mechanically  
199 dumped into a loader packer type recycling truck, that is approved for such purpose by the  
200 CITY and is appropriately labeled as a Recycling Bin. Recycling Bins may also include  
201 Compactors that are owned by the MFD Service Unit wherein the MFD Collection occurs. -The  
202 specifications for Recycling Bins to be provided under the terms of this Agreement are set forth  
203 in Exhibit 6 to this Agreement.

204 1.501.49 Recycling Cart. A heavy plastic receptacle with a rated capacity of at least  
205 32 and not more than 96 gallons, having a hinged tight-fitting lid, and wheels, that is approved  
206 for such purpose by the CITY and is appropriately labeled as a Recycling Cart. The  
207 specifications for Recycling Carts to be provided under the terms of this Agreement are set  
208 forth in Exhibit 5 to this Agreement.

209 1.541.50 Residential Solid Waste. Garbage and Rubbish resulting from the normal  
210 ~~household~~ activities of a Service Unit. Residential Solid Waste must be generated by and at  
211 the Service Unit wherein the Residential Solid Waste is Collected and does not include items  
212 defined herein as Exempt Waste.

213 1.521.51 Residential Street. Smaller local or neighborhood streets within the Service  
214 District. Residential Streets do not include larger arterial and major collectors throughout the  
215 Service District.

216 1.531.52 Residential Street Sweeping Service. The sweeping of Residential Streets  
217 in the Service District.

218 1.541.53 Residential Waste. Residential Solid Waste, Large Items, Used Oil, and  
219 Used Oil Filters, ~~resulting from the normal household activities of a Dwelling Unit or the normal~~  
220 ~~activities of a Small Civic Service Unit or Business Service Unit. Residential Waste must be~~

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221 ~~generated by and at the Dwelling Unit, Small Civic Service Unit or Business Service Unit~~  
222 ~~wherein the Residential Waste is Collected and does not include items defined herein as~~  
223 ~~Exempt Waste.~~

224 1.54 Residential Yard Trimmings Collection Services. ~~The On-Street Yard Trimmings~~  
225 ~~Collection Service, Mandatory Yard Trimmings Cart Collection Service, and Subscription Yard~~  
226 ~~Trimmings Cart Collection Service;~~ ~~processing and marketing of Yard Trimmings from all SFD,~~  
227 ~~MFD, and Small Civic Service Units in the Service District, and the disposal of all Yard~~  
228 ~~Trimmings Residue.~~

229 1.541.55 Roll-Off Collection Service. The Collection of Roll-Off Containers containing  
230 Yard Trimmings, Large Items or construction and demolition debris from SFD Service Units,  
231 MFD Service Units, Small Civic Service Units or Businesses.

232 1.571.56 Roll-Off Container. A metal container with a capacity of twenty (20) or more  
233 cubic yards that is normally loaded onto a motor vehicle and transported to an appropriate  
234 facility.

235 1.581.57 Rubbish. Rubbish shall mean all refuse, accumulation of paper, excelsior,  
236 rags, wooden boxes and containers, sweep-ups and all other accumulations of a nature other  
237 than Garbage and Yard Trimmings, ~~resulting from the which are usual to housekeeping or~~  
238 ~~other~~ normal activities of a Service Unit. Rubbish must be generated by and at the Service  
239 Unit wherein the Rubbish is Collected. Rubbish does not include items herein defined as  
240 Exempt Waste.

241 1.591.58 Service District. That area designated as Service District (to be inserted) on  
242 the map included in Exhibit 2 which is attached to and incorporated in this Agreement.

243 1.601.59 Service Recipient. A resident of the City of San Jose residing in a SFD  
244 Service Unit or a MFD Service Unit.

245 1.641.60 Service Unit. Large Civic Service Units, Small Civic Service Units, SFD  
246 Service Units, or MFD Service Units.

247 1.621.61 SFD Collection Service. SFD Solid Waste Collection Service, SFD  
248 Recycling Service, SFD Large Item Collection Service, SFD Used Oil Collection Service, and  
249 SFD Neighborhood Clean-up Service.

250 1.631.62 SFD Large Item Collection Service. The periodic on-call Collection of Large  
251 Items, by the CONTRACTOR, from SFD Service Units and Small Civic Service Units in the  
252 Service District and the delivery of those Large Items to a Disposal Facility, Materials Recycling  
253 Facility or such other facility as may be appropriate under the terms of this Agreement. SFD  
254 Large Item Collection Service does not include the Collection of Large Items through the use of  
255 Roll-Off Containers.

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256 | 4.641.63 SFD Neighborhood Clean-up Service. The periodic Collection of Large  
257 | Items and Yard Trimmings, using Roll-Off Containers, by the CONTRACTOR as part of the  
258 | CITY'S Neighborhood Clean-up Program.

259 | 4.651.64 SFD Recycling Service. The Collection of Recyclable Materials, by the  
260 | CONTRACTOR, from SFD and Small Civic Service Units in the Service District and the delivery  
261 | of those Recyclable Materials to a Materials Recycling Facility and the processing and  
262 | marketing of those Recyclable Materials.

263 | 4.661.65 SFD Solid Waste Collection Service. The Collection of Residential Solid  
264 | Waste, by the CONTRACTOR, from SFD and Small Civic Service Units in the Service District  
265 | and the delivery of that Residential Solid Waste to a Disposal Facility.

266 | 4.671.66 SFD Service Unit. Any Dwelling Unit or Business Service Unit in the  
267 | Service District utilizing a Garbage Cart, or any combination of Dwelling Units sharing Garbage  
268 | Carts, for the accumulation and set-out of Residential Solid Waste.

269 | 4.681.67 SFD Used Oil Collection Service. The Collection of Used Oil in Used Oil  
270 | Containers and Used Oil Filters in Used Oil Filter Containers, by the CONTRACTOR, from all  
271 | SFD and Small Civic Service Units in the Service District utilizing Used Oil and Filter  
272 | Containers for the accumulation and set-out of Used Oil and Filters and the appropriate  
273 | disposition of the Used Oil and Used Oil Filters in accordance with the requirements of this  
274 | Agreement.

275 | 4.691.68 Sludge. The accumulated solids, residues, and precipitates generated as a  
276 | result of waste treatment or processing, including wastewater treatment, water supply  
277 | treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped  
278 | from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such  
279 | waste having similar characteristics or effects.

280 | 4.701.69 Small Civic Service Unit. Those neighborhood parks, community gardens,  
281 | fire stations, and other CITY properties as set forth in Exhibits 7 and 7A which areis attached to  
282 | and included in this Agreement.

283 | 4.711.70 Stable Matter. Manure and other waste matter normally accumulated and  
284 | stables or in livestock or poultry enclosures.

285 | 4.721.71 Subscription Yard Trimmings Cart Collection Service. The Collection,  
286 | processing and marketing of Yard Trimmings from a SFD Service Unit, MFD Service Unit or  
287 | Small Civic Service Unit that has elected ~~that is has been given permission by the CITY~~ to  
288 | utilize a Yard Trimmings Cart for the set out of Yard Trimmings and the disposal of the Yard  
289 | Trimmings Processing Residue.

290 | 4.731.72 Sweep Waste. The accumulated waste materials generated as a result of  
291 | performing Residential Street Sweeping Services. Sweep Waste includes, but is not limited to

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292 deposits of loose dirt, rocks, glass, cans, leaves, sticks, papers, Yard Trimmings residue or any  
293 like materials that can be removed by Residential Street Sweeping operations.

294 4.741.73 Sweeper Route. A daily path or itinerary followed by a sweeper that has  
295 been clearly divided into an a.m. and p.m. section.

296 4.751.74 Tagged Garbage Bag. A plastic bag meeting the requirements specified in  
297 Chapter 9.10 of the San Jose Municipal Code, not exceeding sixty (60) pounds in weight to  
298 which is attached a CITY-provided tag designating the material as eligible for Collection.

299 4.761.75 Traffic Island. Islands, some of which have handicapped access cut-outs,  
300 that are usually found at street intersections whose primary function is to protect and aid  
301 pedestrians from vehicles.

302 4.771.76 Transit Mall Zone. The Transit Mall Zone described in San Jose Municipal  
303 Code Section 9.10.1500 and as set forth in Exhibit 9 to this Agreement.

304 4.781.77 Travel Mile. A one mile distance traveled along a street when the brooms of  
305 a street sweeper are disengaged and no actual sweeping occurs, (e.g., distance between the  
306 CONTRACTOR'S service yard and the individual routes, and the distance to and from the  
307 dumpsite).

308 4.791.78 Used Oil. Any oil that has been refined from crude oil or has been  
309 synthetically produced, and is no longer useful to the Service Recipient because of extended  
310 storage, spillage or contamination with non-hazardous impurities such as dirt or water; or has  
311 been used and as a result of such use has been contaminated with physical or chemical  
312 impurities. Used Oil must be generated by and at the Service Unit wherein the Used Oil is  
313 Collected. Used Oil does not include transmission fluid.

314 4.801.79 Used Oil Container. A plain copoly container provided by the  
315 CONTRACTOR for the accumulation of Used Oil that is at least four (4) quarts in capacity,  
316 leak-proof, has a screw-on lid and has a label designating it for use as a Used Oil Container.

317 4.811.80 Used Oil Filter. Any oil filter that is no longer useful to the Service Recipient  
318 because of extended storage, spillage or contamination with non-hazardous impurities such as  
319 dirt or water; or has been used and as a result of such use has been contaminated with  
320 physical or chemical impurities. Used Oil Filters must be generated by and at the Service Unit  
321 wherein the Used Oil Filter is Collected.

322 4.821.81 Used Oil Filter Container. A six (6) mil poly bag with double track seal with  
323 dimensions of at least fourteen and one-half (14.5) inches by eight (8) inches with a one and  
324 one-quarter (1 ¼ ) inch diameter hole above the seal provided by the CONTRACTOR for the  
325 accumulation of Used Oil Filters that has a label designating it for use as a Used Oil Filter  
326 Container.

327 | 1.831.82 White Goods. Inoperative and discarded refrigerators, ranges, water  
328 | heaters, freezers, and other similar household appliances.

329 | 1.841.83 Work Day. Any day, Monday through Friday that is not a holiday as set  
330 | forth in Section 3.06 of this Agreement.

331 | 1.851.84 Yard Trimmings. Any vegetative matter resulting from normal yard and  
332 | landscaping maintenance that is not more than five (5) feet in its longest dimension or six (6)  
333 | inches in diameter or weighs more than fifty (50) pounds and any natural Christmas tree  
334 | regardless of size and weight. Yard Trimmings includes plant debris, such as Palm, Yucca and  
335 | Cactus, grass clippings, leaves, pruning, weeds, branches, brush, Christmas trees, and other  
336 | forms of organic waste and must be generated by and at the Service Unit wherein the Yard  
337 | Trimmings are Collected. Yard Trimmings do not include items herein defined as Exempt  
338 | Waste.

339 | 1.861.85 Yard Trimmings Cart. A heavy plastic receptacle with a rated capacity of at  
340 | least 32 and not more than 96 gallons, having a hinged tight-fitting lid, and wheels that is  
341 | approved for such purpose by the CITY and is appropriately labeled as a Yard Trimmings Cart.  
342 | The specifications for Yard Trimmings Carts to be provided under the terms of this Agreement  
343 | are set forth in Exhibit 5 to this Agreement.

344 | 1.871.86 Yard Trimmings Collection and Residential Street Sweeping Program. Yard  
345 | Trimmings Collection Service, and Residential Street Sweeping Service.

346 | 1.881.87 Yard Trimmings Collection Service. Residential Yard Trimmings Collection  
347 | Service and Civic Yard Trimmings Collection Services.

348 | 1.891.88 Yard Trimmings Processing Facility. Any facility designed, operated and  
349 | legally permitted for the purpose of receiving, and processing Yard Trimmings and Large Yard  
350 | Trimmings.

351 | 1.901.89 Yard Trimmings Processing Residue. Materials Collected pursuant to this  
352 | Agreement, including both Yard Trimmings, and Contaminants, that are delivered to a Yard  
353 | Trimmings Processing Facility and subsequently landfilled or used as alternative daily cover  
354 | (ADC). Yard Trimmings Processing Residue includes Contaminants removed before or after  
355 | processing and cannot exceed 5% of Collected material by weight in any calendar quarter  
356 | beginning July 1, 2002. Where San Jose Yard Trimmings are commingled for processing, the  
357 | percentage of Yard Trimmings Processing Residue attributed to San Jose will be calculated  
358 | using a CITY approved methodology.

## 359 | **ARTICLE 2. TERM OF AGREEMENT**

360 | 2.01 Initial Terms. The initial term of this Agreement shall be for a period beginning  
361 | at such time as it is properly executed by the CITY and the CONTRACTOR and terminating  
362 | June 30, 2007.

363           2.02 First Extension of Term. On or about January 10, 2006, provided the City  
364 Manager determines that the CONTRACTOR has met the minimum performance and diversion  
365 requirements, as set forth in Article 9, throughout the initial term of the Agreement, CITY shall  
366 offer the CONTRACTOR in writing a three-year extension of this Agreement through June 30,  
367 2010. CONTRACTOR shall respond in writing to CITY'S offer within twenty (20) days of the  
368 date of the receipt of the offer. If CONTRACTOR fails to respond within said twenty (20) days,  
369 CITY'S offer shall be deemed withdrawn and CITY shall have no obligation to extend the term  
370 of this Agreement beyond June 30, 2007. If the term of this Agreement is extended, the  
371 compensation provisions of Article 6 shall not be subject to negotiation. However, the  
372 compensation payable to CONTRACTOR shall be adjusted annually throughout the extended  
373 term as provided in Article 6.

374           2.03 Second Extension of Term. On or about January 10, 2009, provided the City  
375 Manager determines that the CONTRACTOR has met the minimum performance and diversion  
376 requirements, as set forth in Article 9, throughout the extended term of the Agreement, CITY  
377 shall offer the CONTRACTOR in writing a three-year extension of this Agreement through June  
378 30, 2013. CONTRACTOR shall respond in writing to CITY'S offer within twenty (20) days of  
379 the date of the receipt of request. If CONTRACTOR fails to respond within said twenty (20)  
380 days, CITY'S offer shall be deemed withdrawn and CITY shall have no obligation to extend the  
381 term of this Agreement beyond June 30, 2010. If the term of this Agreement is extended, the  
382 compensation provisions of Article 6 shall not be subject to negotiation. However, the  
383 compensation payable to CONTRACTOR shall be adjusted annually throughout the extended  
384 term as provided in Article 6.

385           2.04 Voiding of Extensions. In the event CONTRACTOR fails to meet the minimum  
386 service and diversion requirements set forth in Article 9 of this Agreement, CONTRACTOR  
387 understands and agrees that the service extensions set forth in Sections 2.02 and 2.03 above  
388 are voided and that this Agreement shall terminate on June 30, 2007 as set forth in Section  
389 2.01 of this Agreement.

### 390           **ARTICLE 3. SERVICES PROVIDED BY THE CONTRACTOR**

391           3.01 Grant of Exclusive Agreement. **Except as otherwise provided in this Agreement,**  
392 ~~t~~The CONTRACTOR is herein granted an exclusive Agreement to provide *(to be inserted)*  
393 Services to all Service ~~Units~~**Recipients** within the Service District. No other services, including  
394 Roll-Off Collection Services, shall be exclusive to the CONTRACTOR.

395           3.02 Recyclable Materials and Large Item Disposal by Service Recipients. Nothing in  
396 this Agreement shall be construed as requiring Service Recipients to set out Recyclable  
397 Materials or Large Items for Collection by CONTRACTOR. Service Recipients may dispose of  
398 Recyclable Materials and Large Items by other appropriate means, including but not limited to,  
399 taking Recyclable Materials or Large Items to drop-off facilities and donating or selling such  
400 items to private or public entities.

401           3.03 Responsibility For Service Billing and Collection. The CITY shall be responsible  
402 for the billing and collection of payments from Service Recipients for *(to be inserted)* Service.

403           3.04 Service Standards. CONTRACTOR shall perform all services under this  
404 Agreement in a thorough and professional manner. Collection Services described in this  
405 Agreement shall be performed regardless of weather conditions, except for Residential Street  
406 Sweeping Services as set forth in Article 5.D, Section 5.01.~~940~~, or difficulty of Collection.  
407 Additional services described in this Agreement shall be performed professionally, promptly  
408 and courteously.

409           3.05 Labor and Equipment. CONTRACTOR shall provide and maintain all labor,  
410 equipment, tools, facilities, and personnel supervision required for the performance of  
411 CONTRACTOR'S obligations under this Agreement. CONTRACTOR shall at all times have  
412 sufficient backup equipment and labor to fill CONTRACTOR'S obligations under this  
413 Agreement. No compensation for CONTRACTOR'S services or for CONTRACTOR'S supply  
414 of labor, equipment, tools, facilities or supervision shall be provided or paid to CONTRACTOR  
415 by CITY or by any Service Recipient except as expressly provided by this Agreement.

416           3.06 Holiday Service. The CITY observes Thanksgiving Day, December 25<sup>th</sup>, and  
417 January 1<sup>st</sup> as legal holidays. CONTRACTOR shall not be required to provide *(to be inserted)*  
418 Services or maintain office hours on the designated holidays. In any week in which one of  
419 these holidays falls on a Work Day, Collection Services for the holiday and each Work Day  
420 thereafter will be delayed one Work Day for the remainder of the week with normally scheduled  
421 Friday Collection Services being performed on Saturday.

422           3.07 Residential Street Sweeping Holiday Service. The CITY observes Thanksgiving  
423 Day, December 25<sup>th</sup>, and January 1<sup>st</sup> as legal holidays. CONTRACTOR shall not be required to  
424 provide Residential Street Sweeping Services or maintain office hours on the designated  
425 holidays. In any week in which one of these holidays falls on a Work Day, Residential Street  
426 Sweeping Service for the holiday and each Work Day thereafter will be delayed one day for  
427 the remainder of the week with normally scheduled Friday Services being performed on  
428 Saturday. However those Residential Street Sweeping Services that would normally follow a  
429 Yard Trimmings Collection day that has been moved to Saturday as a result of the holiday shall  
430 be performed on the next Work Day.

431           3.08 Commingling of Materials.

432           3.08.1 Residential Waste and Recyclable Material. CONTRACTOR shall not at  
433 any time commingle Residential Waste, Collected pursuant to this Agreement, with any  
434 Recyclable Material separated for Collection pursuant to this Agreement without the express  
435 prior written authorization of the City Representative.

436           3.08.2 Residential Wastes Collected in San Jose. CONTRACTOR shall not at  
437 any time commingle any Residential Waste, Collected pursuant to this Agreement, with any

438 other material Collected by CONTRACTOR inside or outside the City of San Jose without the  
439 express prior written authorization of the City Representative.

440           3.08.3 Recyclable Materials. CONTRACTOR shall not at any time commingle  
441 Recyclable Materials Collected during the provision of SFD Recyclable Materials Collection  
442 Services with Recyclable Materials Collected during the provision of MFD Recyclable Materials  
443 Collection Services.

444           3.08.4 Non-San Jose Recyclable Materials. CONTRACTOR shall not  
445 commingle, at any time including at CONTRACTOR'S processing facility, Recyclable Material  
446 Collected within the City of San Jose with Recyclable Materials from any place outside the City  
447 of San Jose, whether Collected by CONTRACTOR or any other person, without the express  
448 prior written authorization of the City Representative.

449           3.09 Spillage and Litter. The CONTRACTOR shall not litter premises in the process  
450 of providing Collection Services or while its vehicles are on the road. The CONTRACTOR shall  
451 transport all Residential Waste, Recyclable Materials, Yard Trimmings, Civic Yard Trimmings,  
452 and Sweep Waste in such a manner as to prevent the spilling or blowing of such waste from  
453 the CONTRACTOR'S vehicle. The CONTRACTOR shall exercise all reasonable care and  
454 diligence in providing Collection Services so as to prevent spilling or dropping of Residential  
455 Waste, Recyclable Materials, Yard Trimmings, Civic Yard Trimmings, and Sweep Waste during  
456 Collection activity and shall immediately, at the time of occurrence, clean up such spilled or  
457 Residential Waste, Recyclable Materials, Yard Trimmings, Civic Yard Trimmings, and Sweep  
458 Waste.

459           3.09.1 Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris  
460 resulting from the CONTRACTOR'S operations or equipment repair shall be covered  
461 immediately with an absorptive material and removed from the street surface. When  
462 necessary, CONTRACTOR shall apply a suitable cleaning agent to the street surface to  
463 provide adequate cleaning.

464           3.09.2 The above paragraphs notwithstanding, CONTRACTOR shall clean up  
465 any spillage or litter caused by CONTRACTOR within 2 hours upon notice from the CITY.

466           3.09.3 To facilitate such cleanup, CONTRACTOR'S vehicles shall at all times  
467 carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

468           3.10 Ownership of Materials.

469           3.10.1 Title to Residential Waste, ~~Civic Solid Waste~~, Yard Trimmings, Civic Yard  
470 Trimmings, and Sweep Waste shall pass to CONTRACTOR at such time as said materials are  
471 placed in the CONTRACTOR'S Collection or Street Sweeping vehicle.

472           3.10.2 Title to Recyclable Materials shall pass to CONTRACTOR at the time the  
473 Recyclable Materials are set out for Collection.

474

#### ARTICLE 4. SERVICE UNITS

475           4.01 Service Units. Service Units shall include all the following categories of  
476 premises which are in CONTRACTOR'S Service District as of July 1, 2002, and all such  
477 premises which may be added to CONTRACTOR'S Service District by means of annexation,  
478 new construction, or as otherwise set forth in this Agreement during term of this Agreement.  
479 *(These will be amended based on the awarded services)*

480                   4.01.1 SFD Service Units

481                   4.01.2 MFD Service Units

482                   4.01.3 Small Civic Service Units

483                   4.01.4 Large Civic Service Units

484           Any question as to whether a premises falls within one of these categories shall  
485 be determined by the City Representative and written notification of those premises to be  
486 included as Service Units shall be provided by CITY to CONTRACTOR. The determination of  
487 the City Representative shall be final.

488           4.02 Service Unit Changes. The CITY and CONTRACTOR acknowledge that during  
489 the term of this Agreement it may be necessary or desirable to add or delete Service Units for  
490 which CONTRACTOR will provide *(to be inserted)* Service.

491                   4.02.1 Additions and Deletions. CONTRACTOR shall provide *(to be inserted)*  
492 Services described in this Agreement to new Service Units in CONTRACTOR'S Service District  
493 within five (5) Work Days of receipt of notice from the CITY through the Customer Service  
494 System to begin such *(to be inserted)* Service. Service Units may also be added at the request  
495 of CONTRACTOR with written approval of the City Representative or at the request of the  
496 Service Unit and written approval of eligibility by the City Representative.

497                   4.02.2 CONTRACTOR shall immediately cease providing *(to be inserted)*  
498 Services to Service Unit upon receipt of notice from the CITY through the Customer Service  
499 System to stop such service. Service Units may also be deleted because of a determination  
500 by the CITY that the premises are not located in CONTRACTOR'S Service District, or that the  
501 premises do not qualify for *(to be inserted)* Services.

502                   4.02.3 CONTRACTOR shall revise the Service Unit route maps to show the  
503 addition or deletion of Service Units in these categories and shall provide such revised maps to  
504 the City Representative as requested.

505           4.03 Annexation. If during the life of the Agreement, additional territory within or  
506 adjacent to the CONTRACTOR'S Service District is acquired by the CITY through annexation,  
507 CONTRACTOR agrees to provide *(to be inserted)* Services in such annexed area in  
508 accordance with the provisions and service rates set forth in this Agreement. Such *(to be*  
509 *inserted)* Services shall begin within ten (10) days of receipt of written notice from the CITY.

510 CONTRACTOR shall not begin *(to be inserted)* Service without written authorization from the  
511 CITY.

512 4.04 Street Additions. As neighborhoods are annexed to the CITY or as new streets  
513 are constructed and accepted by the CITY, streets may or may not be added to the Residential  
514 Street Sweeping Service program at the CITY'S sole option. If said streets are added to the  
515 program, it shall not alter any provisions of the Agreement and the additional Curb Miles shall  
516 be paid for at the Curb Mile rate as set forth in Exhibit 1, which is attached to and incorporated  
517 in this Agreement.

518 4.05 Street Deletions. The CITY may require some streets to be temporarily or  
519 permanently removed from the list of scheduled streets swept under the Agreement.

520 *For purposes of the RFP, Collection Service Sections will be included as Articles 5.A,*  
521 *6.A and 7.A for SFD Collection Services; 5.B, 6.B, and 7.B for MFD Collection Services; 5.C,*  
522 *6.C and 7.C for Yard Trimmings Collection Services; and 5.D, 6.D and 7.D for Residential*  
523 *Street Sweeping Services. Once the final services are awarded, Articles 5, 6, and 7 will be*  
524 *amended to reflect the actual services awarded.*

## 525 **ARTICLE 5. SFD COLLECTION SERVICES**

526 The CONTRACTOR shall provide SFD Collection Services to all SFD Service Units in  
527 the Service District.

528 5.01 Transition. CONTRACTOR understands and agrees that the time between the  
529 formal Agreement signing and July 1, 2002 is intended to provide the CONTRACTOR with  
530 sufficient time to, among other things, order equipment, prepare necessary routing changes,  
531 implement changes in the recycling program, obtain permits and licenses, establish/build  
532 facilities, obtain required service agreements, begin the public awareness campaign as part of  
533 the CONTRACTOR'S transition program, coordinate with the CITY'S public awareness  
534 campaign, and integrate other program changes as specified in this Agreement.  
535 CONTRACTOR shall be responsible for the provision of all Collection services beginning July  
536 1, 2002. Accordingly, CONTRACTOR shall provide one hundred percent (100%) of the SFD  
537 Collection Services set forth in this Article, including full implementation of commingled SFD  
538 Recycling Collection Services, no later than October 1, 2002.

539 5.02 SFD Solid Waste Collection Service. This service will be governed by the  
540 following terms and conditions:

541 5.02.1 Conditions of Service. The CONTRACTOR shall provide SFD Solid  
542 Waste Collection Service to all SFD Service Units in the Service District whose Residential  
543 Solid Waste is properly containerized in Garbage Carts or Tagged Garbage Bags, where the  
544 Garbage Carts and Tagged Garbage Bags have been placed within three (3) feet of the curb,  
545 swale, paved surface of the public roadway, closest accessible roadway, or other such location

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546 agreed to by the CONTRACTOR and Service Recipient, that will provide safe and efficient  
547 accessibility to the CONTRACTOR'S Collection crew and vehicle.

548                   The CONTRACTOR shall utilize the Customer Service System on a daily  
549 basis to report all situations that prevent or hinder Collection at any SFD Service Unit.

550                   ~~5.01-25.02.2~~ Accessibility to Street. In those instances where a public or private  
551 street within the Service District is temporarily closed to vehicular traffic but is accessible to  
552 pedestrian traffic, CONTRACTOR shall utilize pedestrian access to provide SFD Solid Waste  
553 Collection Services with no disruption of service to the SFD Service Unit.

554                   5.02.3 Frequency of Service. This service shall be provided once every week  
555 on a scheduled route basis. However, in those instances where the scheduled Collection day  
556 falls on a holiday as set forth in Section 3.06 herein, the Collection day will be delayed one day  
557 for the remainder of the week with normally scheduled Friday Collection Services being  
558 performed on Saturday.

559                   5.02.4 Hours of Collection. SFD Solid Waste Collection Service shall be  
560 provided, commencing no earlier than 6:00 a.m. and terminating no later than 6:00 p.m.,  
561 Monday through Friday with no service on Saturday (except for holiday service as set forth in  
562 Section 3.06 of this Agreement) or Sunday. The hours, days, or both of Collection may be  
563 extended due to extraordinary circumstances or conditions with the prior written consent of the  
564 City Representative.

565                   *(The following Section will be inserted into the final District A Agreement*  
566 *in place of the preceding Section.)*

567                   ~~5.01-55.02.5~~ Hours of Collection. Except as set forth below, SFD Solid Waste  
568 Collection Service shall be provided, commencing no earlier than 6:00 a.m. and terminating no  
569 later than 6:00 p.m., Monday through Friday with no service on Saturday (except for holiday  
570 service as set forth in Section 3.06 of this Agreement) or Sunday. The hours, days, or both of  
571 Collection may be extended due to extraordinary circumstances or conditions with the prior  
572 written consent of the City Representative.

573                   Collection in the Central Business District shall take place between  
574 2:00 a.m. and 7:00 a.m. (SJMC 9.10.1500).

575                   Collection in the Transit Mall Zone shall take place between 12:00 a.m.  
576 and 5:00 a.m. (SJMC 9.10.1520).

577                   A map of the Central Business District and Transit Mall Zone is included  
578 as Exhibit 9 to this Agreement.

579                   ~~5.01-65.02.6~~ On-Premises Service.

580                   5.02.6.1 Non-Subscription On-Premises Service. Notwithstanding any  
581 term or definition set forth in this Agreement, CONTRACTOR shall provide on-premises

582 Collection of Residential Solid Waste to a SFD Service Unit if all adult Service Recipients  
583 residing therein have disabilities that prevent them from setting their Garbage Cart at the curb  
584 for Collection and if a request for non-subscription on-premises service has been made to, and  
585 approved by, the City Representative in the manner required by CITY. The City Representative  
586 shall utilize the Customer Service System to notify the CONTRACTOR of any SFD Service  
587 Units requiring non-subscription on-premises service, along with the date such service is to  
588 begin. No additional monies shall be due to the CONTRACTOR for the provision of non-  
589 subscription on-premises service.

590                   5.02.6.2 Subscription On-Premises Service. Notwithstanding any term  
591 or definition set forth in this Agreement, the CONTRACTOR shall provide on-premises  
592 Collection of Residential Solid Waste to those SFD Service Units subscribing to such service,  
593 except that subscription on-premises Collection service shall not be available in those  
594 instances where the on-premises Collection location of the Garbage Cart is more than one  
595 hundred (100) yards from the normal curbside set out location. The City Representative shall  
596 utilize the Customer Service System to notify the CONTRACTOR of any SFD Service Units  
597 requiring subscription on-premises Collection service along with the date such service is to  
598 begin.

599                   5.02.6.3 Collection Day. CONTRACTOR shall provide on-premises  
600 Collection Service on the same Work Day that curbside Collection would otherwise be  
601 provided to the SFD Service Unit.

602                   5.02.7 Manner of Collection. The CONTRACTOR shall provide SFD Solid  
603 Waste Collection Service with as little disturbance as possible and shall leave any Garbage  
604 Cart in an upright position at the same point it was Collected without obstructing alleys,  
605 roadways, driveways, sidewalks or mail boxes.

606                   CONTRACTOR'S employees providing SFD Solid Waste Collection  
607 Service shall follow the regular walk for pedestrians while on private property and shall not  
608 trespass nor cross property to the adjoining premises unless the occupant or owner of both  
609 properties has given permission. Care should be taken to prevent damage to property,  
610 including flowers, shrubs, and other plantings.

611                   ~~5.01-85.02.8~~ Non-Collection. CONTRACTOR shall not be required to Collect  
612 any Residential Solid Waste that is not placed either in a Garbage Cart or in a Tagged  
613 Garbage Bag. CONTRACTOR shall not be required to Collect Residential Solid Waste from a  
614 Garbage Cart when the contents exceed the volume of the Garbage Cart when its lid is closed.  
615 In the event of non-collection, CONTRACTOR shall affix to the Garbage Cart a Non-Collection  
616 Notice explaining why Collection was not made. Prior to the end of the Work Day,  
617 CONTRACTOR shall utilize the Customer Service System to notify the City Representative of  
618 any non-collection occurrences.

619                   5.02.9 Spillage. The CONTRACTOR shall not be responsible for cleaning up  
620 sanitary conditions around Garbage Carts caused by the carelessness of the Service  
621 Recipient; however, the CONTRACTOR shall clean up any Residential Solid Waste spilled  
622 from a Garbage Cart by the CONTRACTOR or its employees. During transport, all Residential  
623 Solid Waste shall be contained, covered or enclosed so that leaking, spilling and blowing of  
624 the Residential Solid Waste is prevented. The CONTRACTOR shall be responsible for the  
625 immediate cleanup of any spillage caused by the CONTRACTOR or its employees.

626                   5.02.10 Purchase and Distribution of Garbage Carts. The CONTRACTOR  
627 shall be responsible for the purchase and distribution of fully assembled and functional  
628 Garbage Carts to those SFD Service Units in the Service District as directed by the CITY. The  
629 size of the Garbage Cart to be distributed will be in accordance with the information to be  
630 provided by the CITY to the CONTRACTOR and the distribution shall be completed within five  
631 (5) Work Days of receipt of that information. If directed by the City Representative,  
632 CONTRACTOR will provide multiple Garbage Carts to a SFD Service Unit. Garbage Carts  
633 shall be no less than twenty (20) nor more than ninety-six (96) gallons in capacity, affixed with  
634 the CITY logo and meet the specifications set forth in Exhibit 5.

635                   CONTRACTOR shall also distribute fully assembled and functional  
636 Garbage Carts to new SFD Service Units that are added to CONTRACTOR'S Service District  
637 during the term of this Agreement. The size of the Garbage Cart to be distributed will be in  
638 accordance with the information to be provided by the City Representative to the  
639 CONTRACTOR and the distribution shall be completed within five (5) Work Days of receipt of  
640 the information from the City Representative.

641                   ~~5.01.11~~5.02.11 Replacement of Garbage Carts. CONTRACTOR'S employees  
642 shall take care to prevent damage to Garbage Carts by unnecessary rough treatment.  
643 However, any Garbage Cart damaged by the CONTRACTOR shall be replaced by the  
644 CONTRACTOR, at the CONTRACTOR'S expense, within five (5) Work Days at no cost or  
645 inconvenience to the Service Recipient.

646                   Upon notification to the CONTRACTOR by the CITY or a Service  
647 Recipient that the Service Recipient's Garbage Cart has been stolen or that it has been  
648 damaged beyond repair through no fault of the CONTRACTOR, the CONTRACTOR shall  
649 deliver a replacement Garbage Cart to such Service Recipient within five (5) Work Days. The  
650 CONTRACTOR shall utilize the Customer Service System to report all Garbage Cart  
651 replacements to CITY.

652                   Each Service Recipient shall be entitled to the replacement of one (1)  
653 lost, destroyed, or stolen Garbage Cart during the life of this Agreement at no cost to the  
654 Service Recipient. Accordingly CONTRACTOR shall be compensated for the cost of those  
655 replacements in excess of one (1) per Service Recipient during the life of the Agreement, in  
656 accordance with the "Cart Exchange" Service Rate set forth in Exhibit 1, which is attached to

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657 and incorporated in this Agreement or as may be adjusted by the CITY from time to time as  
658 provided under the terms of this Agreement.

659                   CONTRACTOR understands and agrees that this provision is intended  
660 to be applied on a per Service Recipient basis, not a per SFD Service Unit basis.

661                   5.01.125.02.12 Repair of Garbage Carts. CONTRACTOR shall be responsible  
662 for repair of Garbage Carts in the areas to include but not be limited to, hinged lids, wheels and  
663 axles. Within five (5) Work Days of notification by the CITY or a Service Recipient of the need  
664 for such repairs, the CONTRACTOR shall repair the Garbage Cart or if necessary, remove the  
665 Garbage Cart for repairs and deliver a replacement Garbage Cart to the Service Recipient.  
666 The CONTRACTOR shall utilize the Customer Service System daily to report all Garbage Cart  
667 repairs to the CITY.

668                   5.02.13 Garbage Cart Exchange. Upon notification to the CONTRACTOR by  
669 the CITY or a Service Recipient that a change in the size of a Garbage Cart is required, the  
670 CONTRACTOR shall deliver such Garbage Cart to such Service Recipient within five (5) Work  
671 Days. The CONTRACTOR shall utilize the Customer Service System daily to report all  
672 Garbage Cart exchanges to the CITY. Each SFD Service Unit shall be eligible to receive one  
673 (1) free Garbage Cart exchange per Agreement Year during the term of this Agreement.  
674 Accordingly CONTRACTOR shall be compensated for the cost of those exchanges in excess  
675 of one (1) per Agreement Year, in accordance with the "Cart Exchange" service rate as set  
676 forth in Exhibit 1 or as may be adjusted under the terms of this Agreement.

677                   5.02.14 Ownership of Garbage Carts. Ownership of Garbage Carts shall rest  
678 with the CONTRACTOR, except that ownership of Garbage Carts in the possession of a  
679 Service Recipient at the end of this Agreement shall rest with the CITY.

680                   5.02.15 Disposal Facility. Except as set forth below, all Residential Solid Waste  
681 Collected as a result of performing SFD Solid Waste Collection Services shall be transported  
682 to, and disposed of, at the Disposal Facility. In the event the Disposal Facility is closed on a  
683 Work Day, the CONTRACTOR shall transport and dispose of the Residential Solid Waste at  
684 such other legally permitted disposal facility as designated in writing by CITY. Failure to  
685 comply with this provision shall result in the levy of an administrative charge as specified in  
686 Section 19 of this Agreement and may result in the CONTRACTOR being in default under this  
687 Agreement.

688                   5.03 SFD Large Item Collection Service. This service will be governed by the  
689 following terms and conditions:

690                   5.03.1 Conditions of Service. The CONTRACTOR shall provide SFD Large Item  
691 Collection Service to all SFD Service Units in the Service District whose Large Items have  
692 been placed within three (3) feet of the curb, swale, paved surface of the public roadway,  
693 closest accessible roadway, or other such location agreed to by the CONTRACTOR and  
694 Service Recipient, that will provide safe and efficient accessibility to the CONTRACTOR'S

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695 Collection crew and vehicle. Each three (3) Large Items shall be considered an item and shall  
696 serve as the basis for invoicing.

697 The CONTRACTOR shall utilize the Customer Service System on a daily  
698 basis to report all situations that prevent or hinder Collection at any SFD Service Unit.

699 ~~5.01-25.03.2~~ 5.01-25.03.2 Accessibility to Street. In those instances where a public or private  
700 street within the Service District is temporarily closed to vehicular traffic but is accessible to  
701 pedestrian traffic, CONTRACTOR shall not be required to utilize pedestrian access to provide  
702 Large Item Collection Services.

703 5.03.3 Frequency of Service. This service shall be provided to those SFD  
704 Service Units in the Service District requesting the service on an on-call basis. Collection shall  
705 be made from the curbside within ~~five (5) three (3)~~ Work Days of notification by CITY.  
706 CONTRACTOR shall notify the Service Recipient in advance, either in writing or by telephone,  
707 of the specific Work Day the service will be provided.

708 5.03.4 Hours of Collection. CONTRACTOR shall provide SFD Large Item  
709 Collection Service commencing no earlier than 6:00 a.m. and terminating no later than 6:00  
710 p.m., Monday through Friday with no service on Saturday (except for holiday service as set  
711 forth in Section 3.06 of this Agreement) or Sunday. The hours, days, or both of Collection may  
712 be extended due to extraordinary circumstances or conditions with the prior written consent of  
713 the City Representative.

714 *(The following Section is to be inserted into the final District A Agreement in place of the*  
715 *preceding Section.)*

716 ~~5.01-55.03.5~~ 5.01-55.03.5 Hours of Collection. Except as set forth below, SFD Large Item  
717 Collection Service shall be provided, commencing no earlier than 6:00 a.m. and terminating no  
718 later than 6:00 p.m., Monday through Friday with no service on Saturday (except for holiday  
719 service as set forth in Section 3.06 of this Agreement) or Sunday. The hours, days, or both of  
720 Collection may be extended due to extraordinary circumstances or conditions with the prior  
721 written consent of the City Representative.

722 Collection in the Central Business District shall take place between  
723 2:00 a.m. and 7:00 a.m. (SJMC 9.10.1500).

724 Collection in the Transit Mall Zone shall take place between 12:00 a.m.  
725 and 5:00 a.m. (SJMC 9.10.1520).

726 A map of the Central Business District and Transit Mall Zone is included as  
727 Exhibit 9.

728 ~~5.01-65.03.6~~ 5.01-65.03.6 Manner of Collection. The CONTRACTOR shall provide SFD  
729 Large Item Collection Service with as little disturbance as possible.

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730 CONTRACTOR'S employees providing SFD Large Item Collection  
731 Service shall follow the regular walk for pedestrians while on private property and shall not  
732 trespass nor cross property to the adjoining premises unless the occupant or owner of both  
733 properties has given permission. Care should be taken to prevent damage to property,  
734 including flowers, shrubs, and other plantings.

735 ~~5.01-75.03.7~~ Non-Collection. CONTRACTOR shall not be required to Collect  
736 more Large Items from a SFD Service Unit during any Large Item Collection than specified by  
737 the CITY when requesting the CONTRACTOR to perform the Collection.

738 5.03.8 Spillage. The CONTRACTOR shall not be responsible for cleaning up  
739 sanitary conditions caused by the carelessness of the Service Recipient; however, the  
740 CONTRACTOR shall clean up any Large Items spilled or scattered by the CONTRACTOR or  
741 its employees.

742 5.03.9 Maximum Reuse And Recycling. CONTRACTOR shall dispose of Large  
743 Items Collected pursuant to this Agreement in accordance with the following hierarchy:

- 744 ■ Reuse as is (where energy efficiency is not compromised)
- 745 ■ Disassemble for reuse or recycling
- 746 ■ Recycle
- 747 ■ Disposal

748 CONTRACTOR shall not landfill such Large Items unless the Large  
749 Items cannot be reused or recycled.

750 ~~5.01-105.03.10~~ Large Items Containing Freons. In the event CONTRACTOR  
751 Collects Large Items that contain Freons, CONTRACTOR shall handle such Large Items in a  
752 manner such that the Large Items are not subject to regulation as hazardous waste under  
753 applicable state and federal laws or regulations.

754 5.03.11 City Direction Of Large Items. CITY reserves the right to direct  
755 CONTRACTOR to take Large Items Collected pursuant to this Section 5.03 to a designated  
756 site or sites for the purpose of permitting persons who will reuse or recycle such Large Items to  
757 obtain the Large Items at no cost. CONTRACTOR shall have no obligation to dispose of the  
758 Large Items or Large Item residue remaining at the directed site or sites after reusers and  
759 recyclers have removed reusable or recyclable Large Items.

760 5.04 SFD Used Oil Collection Service. This service will be governed by the following  
761 terms and conditions:

762 5.04.1 Conditions of Service. The CONTRACTOR shall provide SFD Used Oil  
763 Collection Service to all SFD Service Units in the Service District utilizing Used Oil Containers  
764 for the accumulation and set-out of their Used Oil, and Used Oil Filter Containers for the  
765 accumulation and set out of their Used Oil Filters where the Used Oil Containers and Used Oil

766 Filter Containers have been placed within three (3) feet of the curb, swale, paved surface of  
767 the public roadway, closest accessible roadway, or other such location agreed to by the  
768 CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to the  
769 CONTRACTOR'S Collection crew and vehicle.

770 The CONTRACTOR shall utilize the Customer Service System on a daily  
771 basis to report all situations that prevent or hinder Collection at any SFD Service Unit.

772 ~~5.01-25.04.2~~ 5.04.2 Accessibility to Street. In those instances where a public or private  
773 street within the Service District is temporarily closed to vehicular traffic but is accessible to  
774 pedestrian traffic, CONTRACTOR shall utilize pedestrian access to provide SFD Used Oil  
775 Collection Services with no disruption of service to the SFD Service Unit.

776 5.04.3 Frequency of Service. This service shall be provided once every week  
777 on a scheduled route basis on the same Work Day as SFD Solid Waste Collection Service.  
778 However, in those instances where the scheduled Collection day falls on a holiday as set forth  
779 in Section 3.06 herein, the Collection day will be delayed one day for the remainder of the  
780 week with normally scheduled Friday Collection Services being performed on Saturday.

781 5.04.4 Manner of Collection. The CONTRACTOR shall provide SFD Used Oil  
782 Collection Service with as little disturbance as possible and shall leave any replacement  
783 containers at the point of Collection without obstructing alleys, roadways, driveways, sidewalks  
784 or mailboxes.

785 CONTRACTOR'S employees providing SFD Used Oil Collection Service  
786 shall follow the regular walk for pedestrians while on private property and shall not trespass nor  
787 cross property to the adjoining premises unless the occupant or owner of both properties has  
788 given permission. Care should be taken to prevent damage to property, including flowers,  
789 shrubs, and other plantings.

790 ~~5.01-55.04.5~~ 5.04.5 Hours of Collection. CONTRACTOR shall provide SFD Used Oil  
791 Collection Service commencing no earlier than 6:00 a.m. and terminating no later than 6:00  
792 p.m., Monday through Friday with no service on Saturday (except for holiday service as set  
793 forth in Section 3.06 of this Agreement) or Sunday. The hours, days, or both of Collection may  
794 be extended due to extraordinary circumstances or conditions with the prior written consent of  
795 the City Representative.

796 *(The following Section will be inserted into the final District A Agreement*  
797 *in place of the preceding Section.)*

798 ~~5.01-65.04.6~~ 5.04.6 Hours of Collection. Except as set forth below, SFD Used Oil  
799 Collection Service shall be provided, commencing no earlier than 6:00 a.m. and terminating no  
800 later than 6:00 p.m., Monday through Friday with no service on Saturday (except for holiday  
801 service as set forth in Section 3.06 of this Agreement) or Sunday. The hours, days, or both of

802 Collection may be extended due to extraordinary circumstances or conditions with the prior  
803 written consent of the City Representative.

804 Collection in the Central Business District shall take place between  
805 2:00 a.m. and 7:00 a.m. (SJMC 9.10.1500).

806 Collection in the Transit Mall Zone shall take place between 12:00 a.m.  
807 and 5:00 a.m. (SJMC 9.10.1520).

808 A map of the Central Business District and Transit Mall Zone is included as  
809 Exhibit 9.

810 ~~5.01.75.04.7~~ 5.04.7 On-Premises Service.

811 5.04.7.1 Non-Subscription On-Premises Service. Notwithstanding any  
812 term or definition set forth in this Agreement, the CONTRACTOR shall provide non-  
813 subscription on-premises Collection of Used Oil and Used Oil Filters to a SFD Service Unit if  
814 the SFD Service Unit has been approved by the CITY for non-subscription on-premises SFD  
815 Solid Waste Collection Service.

816 5.04.7.2 Subscription On-Premises Service. Notwithstanding any term  
817 or definition set forth in this Agreement, the CONTRACTOR shall provide subscription on-  
818 premises Collection of Used Oil and Used Oil Filters to those SFD Service Units subscribing to  
819 subscription on-premises SFD Solid Waste Collection Service.

820 5.04.7.3 Collection Day. CONTRACTOR shall provide on-premises  
821 Collection service on the same Work Day that curbside Collection service would otherwise be  
822 provided to the SFD Service Unit.

823 5.04.8 Non-Collection. CONTRACTOR shall not be required to Collect material  
824 placed in Used Oil or Used Oil Filter Containers unless the material is Used Oil or Used Oil  
825 Filters, as appropriate, and is free of contamination other than contamination normally  
826 expected to be present as a result of the use, storage or spillage of the oil or filter. In the event  
827 of non-collection, CONTRACTOR shall affix to the Used Oil or Used Oil Filter Container a Non-  
828 Collection Notice explaining why Collection was not made. Prior to the end of the Work Day,  
829 CONTRACTOR shall utilize the Customer Service System to notify CITY of any non-collection  
830 occurrences. If non-collection is because the Used Oil or Filter was placed in an improper  
831 container, CONTRACTOR shall also leave Used Oil or Used Oil Filter Containers in a number  
832 sufficient to contain the Used Oil or Used Oil Filters set out, but not exceeding sixteen (16)  
833 quarts, or two (2) Used Oil Filters along with the Non-Collection Notice.

834 5.04.9 Spillage. CONTRACTOR shall carry oil absorbent material on all Used  
835 Oil Collection vehicles and shall cleanup any Used Oil that spills during Collection, which has  
836 leaked from the Used Oil or Used Oil Filter Container, or which spills or leaks during the time  
837 the Used Oil or Used Oil Filter is in the Collection vehicle.

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838                   5.04.10 Used Oil and Used Oil Filter Containers. Within three (3) Work Days of  
839 receipt of a verbal request of CITY or a Service Recipient, CONTRACTOR shall, at  
840 CONTRACTOR'S sole cost and expense, provide the SFD Service Unit where the Service  
841 Recipient resides with Used Oil Containers and Used Oil Filter Containers in the number  
842 requested by the CITY or the Service Recipient but not exceeding a number sufficient to hold  
843 sixteen (16) quarts of Used Oil and two (2) Used Oil Filters.

844                   At the time CONTRACTOR Collects Used Oil from a SFD Service  
845 Recipient, CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, leave at the  
846 premises one (1) Used Oil Container for each Used Oil Container Collected and one (1) Used  
847 Oil Filter Container for each Used Oil Filter Container Collected. CONTRACTOR shall keep  
848 the outside of all Used Oil and Used Oil Filter Containers clean and may re-use the containers  
849 until the condition of the container makes it inappropriate for re-use.

850                   ~~5.01.115.04.11~~ 5.04.11 Segregation of Used Oil. CONTRACTOR shall at all times  
851 keep all Used Oil and Used Oil Filters Collected pursuant to this Agreement segregated from  
852 other materials. CONTRACTOR shall also keep all Used Oil and Used Oil Filters Collected  
853 pursuant to this Agreement segregated from all other Used Oil and Used Oil Filters Collected  
854 by CONTRACTOR or generated by CONTRACTOR until all CITY required measurements and  
855 testing of the Used Oil have been completed. Such segregation includes segregation in the  
856 Collection vehicles, in the holding tanks at the processing facility and all times the Used Oil and  
857 Used Oil Filters are in the CONTRACTOR'S possession.

858                   5.04.12 Used Oil Processing. CONTRACTOR shall recycle all Used Oil  
859 Collected pursuant to this Agreement to the extent feasible and shall properly dispose of all  
860 Used Oil and Used Oil Filters that are contaminated or otherwise cannot be recycled.

861                   CONTRACTOR shall recycle the Used Oil only with persons who are  
862 authorized by the State of California to recycle oil. In the event the Used Oil or Used Oil Filters  
863 Collected pursuant to this Agreement is contaminated to the extent that the Used Oil or Used  
864 Oil Filters are a Hazardous Waste, as determined through titration or other CITY-approved  
865 testing and require disposal as a Hazardous Waste, CONTRACTOR shall dispose of such  
866 Used Oil or Used Oil Filters, at CONTRACTOR'S own cost and expense in accordance with  
867 applicable state and federal law.

868                   CONTRACTOR shall utilize the Customer Service System to immediately  
869 notify the CITY of any contamination which renders the Used Oil unacceptable for recycling or  
870 which requires disposal of the Used Oil or Used Oil Filters as a Hazardous Waste.

871                   5.05 SFD Recycling Service. This service will be governed by the following terms  
872 and conditions:

873                   5.05.1 Conditions of Service. The CONTRACTOR shall provide SFD Recycling  
874 Service to all SFD Service Units in the Service District whose Recyclable Materials are properly  
875 containerized in a Recycling Cart except as set forth in Section 5.05.24 below, where the

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876 Recyclable Materials have been placed within three (3) feet of the curb, swale, paved surface  
877 of the public roadway, closest accessible roadway, or other such location agreed to by the  
878 CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to the  
879 CONTRACTOR'S Collection crew and vehicle. In the event the Service Recipient produces  
880 more Recyclable Materials than can fit in the Recycling Cart, the CONTRACTOR shall Collect  
881 such excess Recyclable Materials as may be containerized in an additional container whose  
882 loaded weight does not exceed forty (40) pounds and set out beside the Recycling Cart, or in  
883 the case of corrugated cardboard as may be placed beside the Recycling Cart.

884 The CONTRACTOR shall utilize the Customer Service System on a daily  
885 basis to report all situations that prevent or hinder Collection at any SFD Service Unit.

886 ~~5.01-25.05.2~~ Accessibility to Street. In those instances where a public or private  
887 street within the Service District is temporarily closed to vehicular traffic but is accessible to  
888 pedestrian traffic, CONTRACTOR shall utilize pedestrian access to provide SFD Recycling  
889 Collection Services with no disruption of service to the SFD Service Unit.

890 5.05.3 Frequency of Service. This service shall be provided once every week  
891 on a scheduled route basis on the same Work Day as SFD Solid Waste Collection Service.  
892 However, in those instances where the scheduled Collection day falls on a holiday as set forth  
893 in Section 3.06 herein, the Collection day will be delayed one day for the remainder of the  
894 week with normally scheduled Friday Collection Services being performed on Saturday.

895 5.05.4 Service Exceptions. Until October 1, 2002 or such earlier time as the  
896 CONTRACTOR has delivered a Recycling Cart to a SFD Service Unit, the Recyclable  
897 Materials of a SFD Service Unit that does not have a Recycling Cart may be containerized in  
898 any type of container whose loaded weight is no more than forty (40) pounds.

899 5.05.5 Hours. CONTRACTOR shall provide SFD Recycling Service  
900 commencing no earlier than 6:00 a.m. and terminating no later than 6:00 p.m., Monday  
901 through Friday with no service on Saturday (except for holiday service as set forth in Section  
902 3.06 of this Agreement) or Sunday. The hours, days, or both of Collection may be extended  
903 due to extraordinary circumstances or conditions with the prior written consent of the City  
904 Representative.

905 *(The following Section is to be inserted into the final District A*  
906 *Agreement)*

907 ~~5.01-65.05.6~~ Hours. Except as set forth below, SFD Recycling Service shall be  
908 provided, commencing no earlier than 6:00 a.m. and terminating no later than 6:00 p.m.,  
909 Monday through Friday with no service on Saturday (except for holiday service as set forth in  
910 Section 3.06 of this Agreement) or Sunday. The hours, days, or both of Collection may be  
911 extended due to extraordinary circumstances or conditions with the prior written consent of the  
912 City Representative.

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913 Collection in the Central Business District shall take place between  
914 2:00 a.m. and 7:00 a.m. (SJMC 9.10.1500).

915 Collection in the Transit Mall Zone shall take place between 12:00 a.m.  
916 and 5:00 a.m. (SJMC 9.10.1520).

917 A map of the Central Business District and Transit Mall Zone is included  
918 as Exhibit 9.

919 5.01.75.05.7 On-Premises Service.

920 5.05.7.1 Non-Subscription On-Premises Service. Notwithstanding any  
921 term or definition set forth in this Agreement, CONTRACTOR shall provide on-premises  
922 Collection of Recyclable Materials to a SFD Service Unit if the SFD Service Unit has been  
923 approved by the CITY for non-subscription on-premises SFD Solid Waste Collection Service.

924 5.05.7.2 Subscription On-Premises Service. Notwithstanding any term  
925 or definition set forth in this Agreement, the CONTRACTOR shall provide subscription on-  
926 premises Collection of Recyclable Materials to those SFD Service Units subscribing to  
927 subscription on-premises SFD Solid Waste Collection Service.

928 5.05.7.3 Collection Day. CONTRACTOR shall provide on-premises  
929 Collection on the same Work Day that curbside Collection would otherwise be provided to the  
930 Service Recipient.

931 5.05.8 Manner of Collection. The CONTRACTOR shall provide SFD Recycling  
932 Service with as little disturbance as possible and shall leave any Recycling Cart in an upright  
933 position at the same point it was Collected without obstructing alleys, roadways, driveways,  
934 sidewalks or mail boxes. The CONTRACTOR shall be responsible for sorting and delivering  
935 Recyclable Materials to the Materials Recycling Facility as appropriate.

936 CONTRACTOR'S employees providing SFD Recycling Service shall  
937 follow the regular walk for pedestrians while on private property and shall not trespass nor  
938 cross property to the adjoining premises unless the occupant or owner of both properties has  
939 given permission. Care should be taken to prevent damage to property, including flowers,  
940 shrubs, and other plantings.

941 5.01.95.05.9 Recycling - Improper Procedure. Except as set forth below in this  
942 Section 5.05.9, the CONTRACTOR shall not be required to Collect Recyclable Materials if the  
943 Service Recipient does not segregate the Recyclable Materials from Residential Solid Waste.  
944 If Recyclable Materials are contaminated through commingling with Residential Solid Waste,  
945 the CONTRACTOR shall, if practical, separate the Residential Solid Waste from the  
946 Recyclable Materials. The Recyclable Materials shall then be Collected and the Residential  
947 Solid Waste shall be left in the Recycling Cart along with a Non-Collection Notice explaining  
948 why the Residential Solid Waste is not considered a Recyclable Material. However, in the  
949 event the Recyclable Materials and Residential Solid Waste are commingled to the extent that

950 they cannot easily be separated by the CONTRACTOR or the nature of the Residential Solid  
951 Waste renders the entire Recycling Cart contaminated, the CONTRACTOR will leave the  
952 Recycling Cart un-emptied along with a Non-Collection Notice that contains instructions on the  
953 proper procedures for setting out Recyclable Materials. The CONTRACTOR will utilize the  
954 Customer Service System to notify the CITY by the end of each Work Day of the address(es)  
955 of any Service Recipient(s) whose Recyclable Materials were not Collected that day and the  
956 reason they were not Collected.

957           5.05.10 Spillage. The CONTRACTOR shall not be responsible for cleaning up  
958 sanitary conditions around Recycling Carts caused by the carelessness of the Service  
959 Recipient; however, the CONTRACTOR shall clean up any Recyclable Materials spilled from a  
960 Recycling Cart by the CONTRACTOR or its employees. During transport, all Recyclable  
961 Materials shall be contained, covered or enclosed so that leaking, spilling and blowing of the  
962 Recyclable Materials is prevented. The CONTRACTOR shall be responsible for the immediate  
963 clean-up of any spillage caused by the CONTRACTOR or its employees.

964           5.05.11 Purchase and Initial Distribution of Recycling Carts. The  
965 CONTRACTOR shall be responsible for the purchase and distribution of fully assembled and  
966 functional Recycling Carts to all SFD Service Units in the Service District. CONTRACTOR  
967 shall complete the initial distribution of Recycling Carts no later than October 1, 2002. The size  
968 of the Recycling Cart to be distributed will be in accordance with the list to be provided by the  
969 CITY to the CONTRACTOR. Recycling Carts shall be no less than thirty two (32) nor more  
970 than ninety-six (96) gallons in capacity, affixed with the CITY recycling logo and meet the  
971 specifications set forth in Exhibit 5.

972           CONTRACTOR shall also distribute fully assembled and functional  
973 Recycling Carts to new SFD Service Units that are added to CONTRACTOR'S Service District  
974 during the term of this Agreement. The size of the Recycling Cart to be distributed will be in  
975 accordance with the list to be provided by the City Representative to the CONTRACTOR and  
976 the distribution shall be completed within five (5) Work Days of receipt of the list from the City  
977 Representative.

978           ~~5.01.125.05.12~~ Replacement of Recycling Carts. Care shall be taken by  
979 CONTRACTOR'S employees to prevent damage to Recycling Carts by unnecessary rough  
980 treatment. However, any Recycling Cart damaged by the CONTRACTOR shall be replaced by  
981 the CONTRACTOR, at the CONTRACTOR'S expense, within five (5) Work Days at no cost or  
982 inconvenience to the Service Recipient.

983           Upon notification to the CONTRACTOR by the CITY or a Service  
984 Recipient that the Service Recipient's Recycling Cart has been stolen or that it has been  
985 damaged beyond repair through no fault of the CONTRACTOR, the CONTRACTOR shall  
986 deliver a replacement Recycling Cart to such Service Recipient within five (5) Work Days. The

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987 CONTRACTOR shall utilize the Customer Service System daily to report all Recycling Cart  
988 replacements to CITY.

989 Each Service Recipient shall be entitled to the replacement of one (1)  
990 lost, destroyed, or stolen Recycling Cart during the life of this Agreement at no cost to the  
991 Service Recipient. Accordingly CONTRACTOR shall be compensated for the cost of those  
992 replacements in excess of one (1) per Service Recipient during the life of the Agreement, in  
993 accordance with the "Cart Exchange" service rate set forth in Exhibit 1 or as may be adjusted  
994 by the CITY under the terms of this Agreement.

995 CONTRACTOR understands and agrees that this provision is intended  
996 to be applied on a per Service Recipient basis, not a per SFD Service Unit basis.

997 5.01.135.05.13 Repair of Recycling Carts. CONTRACTOR shall be  
998 responsible for repair of Recycling Carts in the areas to include but not be limited to, hinged  
999 lids, wheels and axles. Within five (5) Work Days of notification by the CITY or a Service  
1000 Recipient of the need for such repairs, the CONTRACTOR shall repair the Recycling Cart or if  
1001 necessary, remove the Recycling Cart for repairs and deliver a replacement Recycling Cart to  
1002 the Service Recipient. The CONTRACTOR shall utilize the Customer Service System daily to  
1003 report all Recycling Cart repairs to the CITY.

1004 5.05.14 Recycling Cart Exchange. Upon notification to the CONTRACTOR by  
1005 the CITY or a Service Recipient that a change in the size of a Recycling Cart is required, the  
1006 CONTRACTOR shall have sufficient inventory of Recycling Carts on hand to be able to deliver  
1007 such Recycling Cart to such Service Recipient within five (5) Work Days. The CONTRACTOR  
1008 shall utilize the Customer Service System daily to report the exchange to CITY. Each SFD  
1009 Service Unit shall be eligible to receive one (1) free Recycling Cart exchange per Agreement  
1010 Year during the term of this Agreement. Accordingly CONTRACTOR shall be compensated for  
1011 the cost of those exchanges in excess of one (1) per Agreement Year, in accordance with the  
1012 "Cart Exchange" service rate as set forth in Exhibit 1 or as may be adjusted under the terms of  
1013 this Agreement.

1014 5.05.15 Ownership of Recycling Carts. Ownership of Recycling Carts shall rest  
1015 with the CONTRACTOR, except that ownership of Recycling Carts in the possession of a  
1016 Service Recipient at the end of this Agreement shall rest with the CITY.

1017 5.05.16 Material Recycling Facility. All Recyclable Materials Collected as a  
1018 result of performing Recycling Services shall be delivered to the Material Recycling Facility.  
1019 Failure to comply with this provision shall result in the levy of an administrative charge as  
1020 specified in Article 19 of this Agreement and may result in the CONTRACTOR being in default  
1021 under this Agreement.

1022 5.05.17 Inspections. The CITY shall have the right to inspect the  
1023 CONTRACTOR'S MRF or recycling vehicles and their contents at any time while operating  
1024 inside or outside the CITY.

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1025                   5.05.18 Recycling - Changes to Work.   Should ~~unanticipated events,~~  
1026 ~~circumstances or~~ changes in law arise that necessitate any additions or deletions to the work  
1027 described herein including the type of items included as Recyclable Materials, the parties shall  
1028 negotiate any necessary cost changes and shall enter into an Agreement amendment covering  
1029 such modifications to the work to be performed and the compensation to be paid before  
1030 undertaking any changes or revisions to such work.

1031                   5.06 SFD Neighborhood Clean-Up Services.   A minimum of three (3) times per  
1032 Agreement year, per each Council District in the Service District, (*approximately 12 times in*  
1033 *District A, 8 times in District B and 7 times in District C*) CONTRACTOR shall, in response to  
1034 the written request of the City Representative, deliver and collect Roll-Off Containers for use in  
1035 residential neighborhood clean-up programs.   These services shall consist of a single  
1036 Collection day beginning at 6:00 a.m. and ending at 8:00 p.m.   The City Representative shall  
1037 notify CONTRACTOR in writing not less than thirty (30) calendar days prior to the date of the  
1038 service.   The notice to CONTRACTOR shall specify the date of delivery and collection of the  
1039 Roll-Off Containers, the location(s) for delivery, and the number of and size of the Roll-Off  
1040 Containers to be delivered.   As part of this service, CONTRACTOR shall provide on-site  
1041 supervision at all times the Roll-Off Containers are available for SFD Neighborhood Clean-Up  
1042 Services.   CONTRACTOR shall be compensated for providing SFD Neighborhood Clean-Up  
1043 Services in accordance with the "Neighborhood Clean-up Services" service rates as set forth in  
1044 Exhibit 1 or as may be adjusted under the terms of this Agreement.   CITY will provide CDA for  
1045 the disposal of materials Collected as part of this service.

1046                   5.07 Small Civic Service Units.   The CONTRACTOR shall provide SFD Collection  
1047 Service as set forth in Sections 5.01 through 5.06 above to those Small Civic Service Units set  
1048 forth in Exhibit 7A to this Agreement and as may be amended by the CITY.

1049                   ~~5.07~~ 5.08 Service Agreement.   CONTRACTOR shall obtain a signed service  
1050 agreement from each SFD Service Unit complex or development with private streets and each  
1051 Small Civic Service Unit set forth in Exhibit 7A.   CONTRACTOR shall provide the CITY with a  
1052 copy of all signed service agreements.   The service agreement will contain the following  
1053 information: name and address of the complex, development, ~~or~~ homeowners' association, or  
1054 Small Civic Service Unit; name, address and phone number of the contact person for the  
1055 complex, development, ~~or~~ homeowners' association, or Small Civic Service Unit; permission for  
1056 CONTRACTOR to enter the private streets; number and size of Garbage Carts; and Collection  
1057 location if not curbside.

1058                   ~~5.08 Small Civic Service.~~ ~~The CONTRACTOR shall provide SFD Collection Service to~~  
1059 ~~those Small Civic Service Units set forth in Exhibit 7 to this Agreement.~~

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**ARTICLE 6. (A) CHARGES AND RATES**

1060

1061           6.01 SFD Collection Services. The CITY shall be responsible for the billing and  
1062 collection of payments for all SFD Collection Services. The CITY shall initially pay the  
1063 CONTRACTOR for SFD Collection Services in accordance with the service rates established in  
1064 Exhibit 1 and as may be adjusted under the terms of this Agreement.

1065           6.01.1 Partial Month Service. If, during a month, a SFD Service Unit or Small  
1066 Civic Service Unit is added to or deleted from CONTRACTOR'S SFD and Small Civic Service  
1067 Unit list, the billing for such SFD and Small Civic Service Unit shall be pro-rated as follows: (1)  
1068 if the SFD or Small Civic Service Unit received Collection Service for at least sixteen (16)  
1069 calendar days during the month, CONTRACTOR shall be compensated for that SFD or Small  
1070 Civic Service Unit at the full monthly rate; (2) if the SFD or Small Civic Service Unit received  
1071 Collection Service for less than sixteen (16) calendar days during the month, CONTRACTOR  
1072 shall not be compensated for that SFD or Small Civic Service Unit for that month.

1073           6.01.2 Production of Monthly Invoices. CITY shall produce a monthly invoice for  
1074 services received under this Agreement no later than the tenth (10<sup>th</sup>) day of the month  
1075 following the month such services were rendered.

1076           6.01.3 Review of Monthly Invoice by CONTRACTOR. CONTRACTOR shall  
1077 review the monthly invoice prepared by CITY and within ten (10) calendar days of receipt of  
1078 the invoice, the CONTRACTOR shall notify the City Representative of any discrepancies or  
1079 deficiencies in said invoice.

1080           CITY shall make no base rate payment for any SFD or Small Civic Service Unit  
1081 that is not included on the list of SFD or Small Civic Service Units maintained by the CITY.

1082           CONTRACTOR shall meet with the City Representative within ten (10) calendar  
1083 days of CITY'S receipt of notice of discrepancies or deficiencies to resolve any such  
1084 discrepancies or deficiencies and shall provide to the City Representative any and all  
1085 documentation relating to the discrepancy or deficiency that is requested by the City  
1086 Representative or which CONTRACTOR wishes to provide in support of CONTRACTOR'S  
1087 calculations.

1088           6.02 Payments to CONTRACTOR. Except as otherwise provided in this Agreement,  
1089 CITY shall make monthly payments to CONTRACTOR within thirty (30) calendar days of  
1090 CONTRACTOR'S approval of CITY'S invoice. In the event there are any amounts listed on the  
1091 invoice which remain in dispute after CONTRACTOR and City Representative discuss the  
1092 invoice pursuant to Section 6.01.3, CITY shall pay to CONTRACTOR the undisputed amounts.

1093           6.03 Adjustments to Rates Using Refuse Rate Index (RRI).

1094           6.03.1 Refuse Rate Index (RRI). Beginning on July 1, 2003, and annually  
1095 thereafter, the CONTRACTOR shall, subject to compliance with all provisions of this Article,

---

1096 receive an annual adjustment in the service rates as set forth on lines A.1, A.2.a, A.3.a, B.1,  
1097 B.2, B.3, B.4, B.5.a, and B.5.b. of Exhibit 1 to this Agreement.

1098           At the start of the second year of the Agreement (July 1, 2003), and annually  
1099 thereafter during the term of this Agreement, the service rates set forth in Section 6.03.1 above  
1100 shall be increased or decreased by the percentage change in the Refuse Rate Index (RRI)  
1101 from the base month, which shall be December of the prior preceding year, to December of the  
1102 preceding year as contained in the most recent publication of the source documents listed in  
1103 Exhibit 3, which is attached to and incorporated in this Agreement. Therefore, the first rate  
1104 adjustment will be based on the percentage change between the December 2001 indices and  
1105 the December 2002 indices.

1106           On or before April 15, 2003 and annually thereafter during the term of this  
1107 Agreement, CONTRACTOR shall deliver to the CITY in the format as set forth in Exhibit 3, and  
1108 as may be further revised by the CITY from time to time, financial information for the specific  
1109 services performed under this Agreement for the preceding calendar year. If the  
1110 CONTRACTOR fails to submit the financial information in the required format prior to April  
1111 15th, it is agreed that the CONTRACTOR waives the right to the RRI rate adjustment for that  
1112 year. Failure to provide the financial information does not preclude the CITY from applying the  
1113 RRI using the prior years financial data, or pro forma data if no prior year financial data is  
1114 available, if that application would result in a decrease in the affected service rates.

1115           Annual adjustments shall be made only in units of one cent (\$0.01). Fractions  
1116 less than one cent (\$0.01) shall not be considered in making adjustments. The indices shall  
1117 be truncated at four (4) decimal places for the adjustment calculations.

1118           If the failure to submit the required financial information is the result of  
1119 extraordinary or unusual circumstances as demonstrated by the CONTRACTOR to the  
1120 satisfaction of the CITY, the CITY at its sole discretion may consider the request for the annual  
1121 RRI rate adjustment.

1122           As of June 1, 2003 and annually thereafter during the term of this Agreement,  
1123 the CITY shall notice the CONTRACTOR of the RRI adjustment to the affected service rates to  
1124 take place on the subsequent July 1.

1125           6.04 Unit Count. CITY will utilize the Customer Service System to maintain the  
1126 customer database from which the SFD and Small Civic Service Unit count will be derived. In  
1127 the event the CONTRACTOR does not agree with the SFD and Small Civic Service Unit count  
1128 as maintained by the CITY, the CONTRACTOR may request that the CITY and the  
1129 CONTRACTOR perform a joint route audit of the SFD and Small Civic Service Units in the  
1130 Service District at no cost to the CITY.

1131

## ARTICLE 7. (A) DIVERSION

1132           7.01 Diversion Requirements. The CITY requires each CONTRACTOR providing  
1133 SFD Collection Services to achieve a minimum annual Residential Solid Waste (RSW) ~~and~~  
1134 ~~Recyclable Materials~~ diversion rate of thirty five percent (35%) per Service District, ~~and~~ a  
1135 minimum annual Large Item diversion rate of fifty percent (50%) per Service District, ~~and a~~  
1136 ~~minimum annual Neighborhood Clean-up diversion rate of fifty percent (50%) per Service~~  
1137 ~~District.~~ The Residential Solid Waste ~~and Recyclable Materials~~ diversion rate will be measured  
1138 as the net tons of Recyclable Materials sold divided by the sum of the tons of Residential Solid  
1139 Waste and Recyclable Materials Collected, (Tons of Recyclable Materials Sold/(Tons of  
1140 Residential Solid Waste Collected + Tons of Recyclable Materials Collected)); ~~and~~ the Large  
1141 Item diversion rate will be calculated as the ~~net~~ tons of Large Items sold or delivered to a  
1142 recycler or reuser, as required by this Agreement, divided by the total tons of Large Items  
1143 Collected, (Tons of Large Items Sold/Tons of Large Items Collected), ~~and the Neighborhood~~  
1144 ~~Clean-up diversion rate will be calculated as the tons of materials Collected from the provision~~  
1145 ~~of SFD Neighborhood Clean-up Services sold or delivered to a recycler or reuser, as required~~  
1146 ~~by this Agreement, divided by the total tons of materials Collected (Tons of material Sold/Tons~~  
1147 ~~of material Collected).~~

1148           7.02 The SFD diversion requirements will be calculated on a calendar year basis  
1149 beginning January 1, 2003. CONTRACTOR'S failure to meet the minimum diversion  
1150 requirements may result in Agreement termination or administrative charges.

1151           7.03 RSW Diversion Incentive Payment Calculation. CONTRACTORS eligibility for  
1152 the annual RSW diversion incentive payment shall be determined by CITY based on the  
1153 results of the data submitted by the CONTRACTOR through the Customer Service System  
1154 during the calendar year. In the event CONTRACTOR is determined to be eligible for the  
1155 annual RSW diversion payment, such payment shall be calculated as follows:

1156                           The monthly SFD and Small Civic Service Unit count, as set forth on the  
1157 monthly invoice prepared by the CITY and as accepted in final form by CONTRACTOR, for the  
1158 twelve months of the preceding calendar year shall be added and the sum divided by 12 to  
1159 produce an average monthly SFD and Small Civic Service Unit count.

1160                           The average monthly SFD and Small Civic Service Unit count shall be  
1161 multiplied by the appropriate annual RSW diversion incentive rate as set forth on Exhibit 1 to  
1162 the Agreement to determine the annual RSW diversion incentive payment due to  
1163 CONTRACTOR.

1164           7.04 RSW Diversion Incentive Payment. CITY shall make the annual RSW diversion  
1165 incentive payment to CONTRACTOR on August 1<sup>st</sup> following the end of the calendar year in  
1166 which the RSW diversion incentive payment was earned.

1167

## ARTICLE 5.(B) MFD COLLECTION SERVICES

1168           The CONTRACTOR shall provide MFD Collection Services to all MFD Service Units in  
1169 the Service District.

1170           5.01 MFD Solid Waste Collection Service. This service will be governed by the  
1171 following terms and conditions:

1172           5.01.1 Transition. CONTRACTOR understands and agrees that the time  
1173 between the formal Agreement signing and July 1, 2002 is intended to provide the  
1174 CONTRACTOR with sufficient time to, among other things, order equipment, prepare  
1175 necessary routing changes, implement changes in the recycling program, obtain permits and  
1176 licenses, establish/build facilities, obtain signed service agreements from all MFD Service  
1177 Units, begin the public awareness campaign as part of the CONTRACTOR'S transition  
1178 program, and coordinate with the CITY'S public awareness campaign, and integrate other  
1179 program changes as specified in this Agreement. Accordingly, CONTRACTOR shall provide  
1180 one hundred percent (100%) of the MFD Collection Services set forth in this Article, including  
1181 full implementation of commingled Recycling Services, no later than October 1, 2002.

1182           5.01.2 Conditions of Service. The CONTRACTOR shall provide MFD Solid  
1183 Waste Collection Service to all MFD Service Units in the Service District whose Residential  
1184 Solid Waste is properly containerized in Garbage Bins, where the Garbage Bins are accessible  
1185 as set forth in Section 5.01.3 below.

1186           The CONTRACTOR shall utilize the Customer Service System to report  
1187 on a daily basis all situations that prevent or hinder Collection at any MFD Service Unit.

1188           5.01.3 Accessibility. CONTRACTOR shall Collect all Garbage Bins that are  
1189 readily accessible to the CONTRACTOR'S crew and vehicles and not blocked. However,  
1190 CONTRACTOR shall provide "push services" as necessary during the provision of MFD Solid  
1191 Waste Collection Services. Push services shall include, but not be limited to dismount from the  
1192 Collection vehicle, moving the Garbage Bins from their storage location for Collection and  
1193 returning the Garbage Bins to their storage location.

1194           5.01.4 Frequency of Service. This service shall be provided at least once every  
1195 week on a scheduled route basis. However, in those instances where the scheduled Collection  
1196 day falls on a holiday as set forth in Section 3.06 herein, the Collection day will be delayed one  
1197 day for the remainder of the week with normally scheduled Friday Collection Services being  
1198 performed on Saturday. The size of the Garbage Bin and the frequency (above the minimum)  
1199 of Collection shall be determined between the customer and the CONTRACTOR and set forth  
1200 in the service agreement as required by Section 5.08 of this Agreement. However, size and  
1201 frequency shall be sufficient to provide that no Residential Solid Waste need be placed outside  
1202 the Garbage Bin on a regular basis.

1203                   5.01.5 Hours of Collection. MFD Solid Waste Collection Service shall be  
1204 provided, commencing no earlier than 6:00 a.m. and terminating no later than 6:00 p.m.,  
1205 Monday through Friday with no service on Saturday (except for holiday service as set forth in  
1206 Section 3.06 of this Agreement) or Sunday. The hours, days, or both of Collection may be  
1207 extended due to extraordinary circumstances or conditions with the prior written consent of the  
1208 City Representative.

1209                                   *(The following Section is to be inserted into the final District A Agreement*  
1210 *in place of the preceding Section)*

1211                   5.01.6 Hours of Collection. Except as set forth below, MFD Solid Waste  
1212 Collection Service shall be provided, commencing no earlier than 6:00 a.m. and terminating no  
1213 later than 6:00 p.m., Monday through Friday with no service on Saturday (except for holiday  
1214 service as set forth in Section 3.06 of this Agreement) or Sunday. The hours, days, or both of  
1215 Collection may be extended due to extraordinary circumstances or conditions with the prior  
1216 written consent of the City Representative.

1217                                   Collection in the Central Business District shall take place between  
1218 2:00 a.m. and 7:00 a.m. (SJMC 9.10.1500).

1219                                   Collection in the Transit Mall Zone shall take place between 12:00 a.m.  
1220 and 5:00 a.m. (SJMC 9.10.1520).

1221                                   A map of the Central Business District and Transit Mall Zone is included  
1222 as Exhibit 9.

1223                   5.01.7 Manner of Collection. The CONTRACTOR shall provide MFD Solid  
1224 Waste Collection Service with as little disturbance as possible and shall leave any Garbage Bin  
1225 at the same point it originally located without obstructing alleys, roadways, driveways,  
1226 sidewalks or mail boxes.

1227                                   CONTRACTOR'S employees providing MFD Solid Waste Collection  
1228 Service shall follow the regular walk for pedestrians while on private property and shall take  
1229 care to prevent damage to property, including flowers, shrubs, and other plantings.

1230                   5.01.8 Non-Collection. CONTRACTOR shall not be required to Collect any  
1231 Residential Solid Waste that is not placed in a Garbage Bin unless such Residential Solid  
1232 Waste is outside the Garbage Bin as a result of overflow. In the event of non-collection,  
1233 CONTRACTOR shall affix to the Garbage Bin a Non-Collection Notice explaining why  
1234 Collection was not made. Prior to the end of the Work Day, CONTRACTOR shall utilize the  
1235 Customer Service System to notify CITY of any non-collection occurrences.

1236                   5.01.9 Spillage. The CONTRACTOR shall not be responsible for cleaning up  
1237 sanitary conditions around Garbage Bins caused by the carelessness of the Service  
1238 Recipients; however, the CONTRACTOR shall clean up any Residential Solid Waste spilled  
1239 from a Garbage Bin by the CONTRACTOR or its employees. During transport, all Residential

1240 Solid Waste shall be contained, covered or enclosed so that leaking, spilling and blowing of  
1241 the Residential Solid Waste is prevented. The CONTRACTOR shall be responsible for the  
1242 immediate cleanup of any spillage caused by the CONTRACTOR or its employees.

1243                   5.01.10       Residential Solid Waste Overflow. In the case of repeated  
1244 overflows of Residential Solid Waste, CONTRACTOR shall contact the MFD Service Unit  
1245 management to arrange for an appropriate change in Garbage Bin size, Collection frequency  
1246 or both. However, no change shall take place without the written approval of the City  
1247 Representative.

1248                   In the event, CONTRACTOR cannot successfully contact the MFD  
1249 Service Unit management after three attempts, or cannot reach an agreement with such  
1250 management regarding the change in service, CONTRACTOR shall utilize the Customer  
1251 Service System to provide the City Representative with the details of the Residential Solid  
1252 Waste overages, and the attempts at communication with the MFD Service Unit management.  
1253 The City Representative shall respond to CONTRACTOR'S report and make a final written  
1254 determination. Within five (5) Work Days of receipt of the City Representative's written  
1255 determination, CONTRACTOR shall change the Collection Service in accordance with such  
1256 written determination.

1257                   5.01.11       Purchase and Distribution of Garbage Bins. The CONTRACTOR  
1258 shall be responsible for the purchase and distribution of Garbage Bins to all MFD Service Units  
1259 in the Service District. The size of the Garbage Bin to be distributed will be in accordance with  
1260 the service agreement obtained by the CONTRACTOR as set forth in Section 5.08 of this  
1261 Agreement.

1262                   CONTRACTOR shall also distribute Garbage Bins to new MFD Service  
1263 Units that are added to CONTRACTOR'S Service District during the term of this Agreement.  
1264 The size of the Garbage Bin to be distributed will be in accordance with the service agreement  
1265 obtained by the CONTRACTOR as set forth in Section 5.08 of this Agreement and the  
1266 distribution shall be completed within five (5) Work Days of receipt of the signed service  
1267 agreement by the CONTRACTOR from the management of the MFD Service Unit.

1268                   5.01.12 Replacement of Garbage Bins. Care shall be taken by  
1269 CONTRACTOR'S employees to prevent damage to Garbage Bins by unnecessary rough  
1270 treatment. However, any Garbage Bin damaged by the CONTRACTOR shall be replaced by  
1271 the CONTRACTOR, at the CONTRACTOR'S expense, within five (5) Work Days at no cost or  
1272 inconvenience to the Service Recipient.

1273                   Upon notification to the CONTRACTOR by the CITY or a Service  
1274 Recipient that the Service Recipients Garbage Bin has been damaged beyond repair through  
1275 no fault of the CONTRACTOR, the CONTRACTOR shall deliver a replacement Garbage Bin to  
1276 such Service Recipient within five (5) Work Days. The CONTRACTOR shall utilize the  
1277 Customer Service System daily to report the all Garbage Bin replacements to CITY.

1278                   5.01.13 Repair of Garbage Bins. CONTRACTOR shall be responsible for  
1279 repair of Garbage Bins. Within five (5) Work Days of notification by the CITY or a Service  
1280 Recipient of the need for such repairs, the CONTRACTOR shall repair the Garbage Bin or if  
1281 necessary, remove the Garbage Bin for repairs and deliver a replacement Garbage Bin to the  
1282 Service Recipient. The CONTRACTOR shall utilize the Customer Service System daily to  
1283 report all Garbage Bin repairs to the CITY.

1284                   5.01.14 Garbage Bin Exchange. Upon notification to the CONTRACTOR by the  
1285 CITY or a Service Recipient that a change in the size, or number of the Garbage Bins is  
1286 required, the CONTRACTOR shall deliver such Garbage Bin(s) to such Service Recipient  
1287 within five (5) Work Days. The CONTRACTOR shall utilize the Customer Service System daily  
1288 to report exchanges to CITY. Each MFD Service Unit shall be eligible to receive one (1) free  
1289 Garbage Bin exchange per Agreement Year during the term of this Agreement. Accordingly  
1290 CONTRACTOR shall be compensated for the cost of those exchanges in excess of one (1) per  
1291 Agreement Year, in accordance with the “Bin Exchange” service rate set forth in Exhibit 1 as  
1292 may be adjusted by the CITY under the terms of this Agreement.

1293                   5.01.15 Ownership of Garbage Bins. Ownership of Garbage Bins distributed  
1294 by the CONTRACTOR shall rest with the CONTRACTOR except in the case of the termination  
1295 of the Agreement prior to the expiration of the initial term or extended terms due to the default  
1296 of the CONTRACTOR. Under such circumstances, the Garbage Bins shall, at no additional  
1297 cost to the CITY, become the property of the CITY and CONTRACTOR shall submit to the City  
1298 Representative an inventory of Garbage Bins, including their locations, together with all indicia  
1299 of ownership, and shall take all steps necessary to transfer ownership to CITY.

1300                   5.01.16 Annual Cleaning. Once each Agreement Year, at no charge to the  
1301 CITY or the MFD Service Unit, CONTRACTOR shall clean all Garbage Bins at the MFD  
1302 Service Unit’s premises or shall replace the dirty Garbage Bins with clean Garbage Bins and  
1303 remove the dirty Garbage Bins for cleaning. CONTRACTOR shall also provide this service as  
1304 often as requested by the CITY or the management of the MFD Service Unit. Accordingly  
1305 CONTRACTOR shall be compensated for the cost of those cleanings in excess of one (1) per  
1306 fiscal year, in accordance with the “Excess Cleaning” service rate as set forth in Exhibit 1 or as  
1307 may be adjusted by the CITY under the terms of this Agreement.

1308                   5.01.15 Disposal Facility. Except as set forth below, all Residential Solid  
1309 Waste, Collected as a result of performing MFD Solid Waste Collection Services shall be  
1310 transported to, and disposed of, at the Disposal Facility. In the event the Disposal Facility is  
1311 closed on a Work Day, the CONTRACTOR shall transport and dispose of Residential Solid  
1312 Waste at such other legally permitted disposal facility as designated in writing by CITY. Failure  
1313 to comply with this provision shall result in the levy of an administrative charge as specified in  
1314 Article 19 of this Agreement and may result in the CONTRACTOR being in default under this  
1315 Agreement.

1316           5.02 MFD Large Item Collection Service. This service will be governed by the  
1317 following terms and conditions:

1318           5.02.1 Conditions of Service. The CONTRACTOR shall provide MFD Large Item  
1319 Collection Service to all MFD Service Units in the Service District whose Large Items have  
1320 been placed within three (3) feet of the curb, swale, paved surface of the public roadway,  
1321 closest accessible roadway, or other such location, including next to the Garbage Bin, agreed  
1322 to by the CONTRACTOR and the MFD Service Unit management, that will provide safe and  
1323 efficient accessibility to the CONTRACTOR'S Collection crew and vehicle. Each three (3)  
1324 Large Items will be considered a Collection for invoicing purposes.

1325           The CONTRACTOR shall utilize the Customer Service System daily to  
1326 report all situations that prevent or hinder Collection of any MFD Service Unit.

1327           5.02.2 Frequency of Service. This service shall be provided to those MFD  
1328 Service Units in the Service District requesting the service on an on-call basis. Collection shall  
1329 be made from the curbside within ~~three (3)~~ five (5) Work Days of notification by the CITY.  
1330 CONTRACTOR shall notify the Service Recipient or MFD Service Unit management in  
1331 advance, either in writing or by telephone, of the specific Work Day the service will be  
1332 provided.

1333           5.02.3 Hours of Collection. CONTRACTOR shall provide MFD Large Item  
1334 Collection Service commencing no earlier than 6:00 a.m. and terminating no later than 6:00  
1335 p.m., Monday through Friday with no service on Saturday (except for holiday service as set  
1336 forth in Section 3.06 of this Agreement) or Sunday. The hours, days, or both of Collection may  
1337 be extended due to extraordinary circumstances or conditions with the prior written consent of  
1338 the City Representative.

1339           *(The following Section is to be inserted into the final District A Agreement*  
1340 *in place of the preceding Section)*

1341           5.02.4 Hours of Collection. Except as set forth below, CONTRACTOR shall  
1342 provide MFD Large Item Collection Service, commencing no earlier than 6:00 a.m. and  
1343 terminating no later than 6:00 p.m., Monday through Friday with no service on Saturday  
1344 (except for holiday service as set forth in Section 3.06 of this Agreement) or Sunday. The  
1345 hours, days, or both of Collection may be extended due to extraordinary circumstances or  
1346 conditions with the prior written consent of the City Representative.

1347           Collection in the Central Business District shall take place between  
1348 2:00 a.m. and 7:00 a.m. (SJMC 9.10.1500).

1349           Collection in the Transit Mall Zone shall take place between 12:00 a.m.  
1350 and 5:00 a.m. (SJMC 9.10.1520).

1351           A map of the Central Business District and Transit Mall Zone is included  
1352 as Exhibit 9.

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1353                   5.02.5 Manner of Collection. The CONTRACTOR shall provide MFD Large Item  
1354 Collection Service with as little disturbance as possible.

1355                   CONTRACTOR'S employees providing MFD Large Item Collection  
1356 Service shall follow the regular walk for pedestrians while on private property and shall not  
1357 trespass nor cross property to the adjoining premises unless the occupant or owner of both  
1358 properties has given permission. Care should be taken to prevent damage to property,  
1359 including flowers, shrubs, and other plantings.

1360                   5.02.20           Non-Collection. CONTRACTOR shall not be required to Collect  
1361 more Large Items from a MFD Service Unit during any Large Item Collection than specified by  
1362 the CITY when requesting the CONTRACTOR to perform the Collection. shall not be required  
1363 to Collect more than three (3) Large Items per Dwelling Unit from a MFD Service Unit in any  
1364 Large Item Collection.—In the event of non-collection, CONTRACTOR shall affix a Non-  
1365 Collection Notice to the uncollected Large Item(s) explaining why Collection was not made.  
1366 Prior to the end of the Work Day, CONTRACTOR shall utilize the Customer Service System to  
1367 notify CITY of any non-collection occurrences

1368                   5.02.21           Spillage. The CONTRACTOR shall not be responsible for  
1369 cleaning up sanitary conditions caused by the carelessness of the Service Recipient; however,  
1370 the CONTRACTOR shall clean up any Large Items spilled or scattered by the CONTRACTOR  
1371 or its employees.

1372                   5.02.22           Maximum Reuse and Recycling. CONTRACTOR shall dispose of  
1373 Large Items Collected pursuant to this Agreement in accordance with the following hierarchy:

- 1374                   ■ Reuse as is (where energy efficiency is not compromised).
- 1375                   ■ Disassemble for reuse or recycling.
- 1376                   ■ Recycle.
- 1377                   ■ Disposal.

1378                   CONTRACTOR shall not landfill such Large Items unless the Large  
1379 Items cannot be reused or recycled.

1380                   5.02.23           Large Items Containing Freons. In the event CONTRACTOR  
1381 Collects Large Items that contain Freons, CONTRACTOR shall handle such Large Items in a  
1382 manner such that the Large Items are not subject to regulation as hazardous waste under  
1383 applicable state and federal laws or regulations.

1384                   5.02.24           City Direction of Large Items. CITY reserves the right to direct  
1385 CONTRACTOR to take Large Items Collected pursuant to this Section 5.02.24 to a designated  
1386 site or sites for the purpose of permitting persons who will reuse or recycle such Large Items to  
1387 obtain the Large Items at no cost. CONTRACTOR shall have no obligation to dispose of the

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1388 Large Items or large Item residue remaining at the directed site or sites after reusers and  
1389 recyclers have removed reusable or recyclable Large Items.

1390 5.03 MFD Used Oil and Filter Collection Service. This service will be governed by the  
1391 following terms and conditions:

1392 5.03.1 Conditions of Service. The CONTRACTOR shall provide MFD Used Oil  
1393 Collection Service to all participating MFD Service Units in the Service District utilizing Used Oil  
1394 Containers for the accumulation and set out of their Used Oil, and Used Oil Filter Containers  
1395 for the accumulation and set out of their Used Oil Filters. Used Oil Containers and Used Oil  
1396 Filter Containers shall be placed in a collection box at a location that has been agreed to by  
1397 the CONTRACTOR, City Representative and management of the MFD Service Unit that will  
1398 provide safe and efficient accessibility to the CONTRACTOR'S Collection crew and vehicle.

1399 The CONTRACTOR shall utilize the Customer Service System to report  
1400 daily all situations that prevent or hinder Collection from any MFD Service Unit. Participation  
1401 by a MFD Service Unit in MFD Used Oil Collection Service is completely voluntary.

1402 5.03.2 Service Agreement. CONTRACTOR shall obtain a signed MFD Used  
1403 Oil and Filter Collection Service Agreement from management of MFD Service Unit prior to  
1404 performing MFD Used Oil and Filter Collection Services. CONTRACTOR shall provide the  
1405 CITY with a copy of all signed service agreements. The service agreement will contain the  
1406 following information: name and contact person for the MFD Service Unit; name, address, and  
1407 number of units in complex; collection box number(s); location of collection box(es), and  
1408 permission for CONTRACTOR to enter the premises for Collection.

1409 5.03.3 Frequency of Service. This service shall be provided once every week  
1410 on a scheduled route basis on the same Work Day as MFD Solid Waste Collection Service.  
1411 However, in those instances where the scheduled Collection day falls on a holiday as set forth  
1412 in Section 3.06 herein, the Collection day will be delayed one day for the remainder of the  
1413 week with normally scheduled Friday Collection Services being performed on Saturday.

1414 5.03.4 Manner of Collection. The CONTRACTOR shall provide MFD Used Oil  
1415 Collection Service with as little disturbance as possible and shall leave any replacement  
1416 containers at the point of Collection without obstructing alleys, roadways, driveways, sidewalks  
1417 or mailboxes.

1418 CONTRACTOR'S employees providing MFD Used Oil Collection Service  
1419 shall follow the regular walk for pedestrians while on private property and shall not trespass nor  
1420 cross property to the adjoining premises unless the occupant or owner of both properties has  
1421 given permission. Care should be taken to prevent damage to property, including flowers,  
1422 shrubs, and other plantings.

1423 5.03.5 Hours of Collection. CONTRACTOR shall provide MFD Used Oil  
1424 Collection Service commencing no earlier than 6:00 a.m. and terminating no later than 6:00

1425 p.m., Monday through Friday with no service on Saturday (except for holiday service as set  
1426 forth in Section 3.06 of this Agreement) or Sunday. The hours, days, or both of Collection may  
1427 be extended due to extraordinary circumstances or conditions with the prior written consent of  
1428 the City Representative.

1429 *(The following Section is to be inserted into the final District A Agreement*  
1430 *in place of the preceding Section.)*

1431 5.03.6 Hours. Except as set forth below, MFD Used Oil Collection Service shall  
1432 be provided, commencing no earlier than 6:00 a.m. and terminating no later than 6:00 p.m.,  
1433 Monday through Friday with no service on Saturday (except for holiday service as set forth in  
1434 Section 3.06 of this Agreement) or Sunday. The hours, days, or both of Collection may be  
1435 extended due to extraordinary circumstances or conditions with the prior written consent of the  
1436 City Representative.

1437 Collection in the Central Business District shall take place between  
1438 2:00 a.m. and 7:00 a.m. (SJMC 9.10.1500).

1439 Collection in the Transit Mall Zone shall take place between 12:00 a.m.  
1440 and 5:00 a.m. (SJMC 9.10.1520).

1441 A map of the Central Business District and Transit Mall Zone is included  
1442 as Exhibit 9.

1443 5.03.7 Non-Collection. CONTRACTOR shall not ~~be the~~ required to Collect  
1444 material placed in Used Oil or Used Oil Filter Containers unless the material is Used Oil or  
1445 Used Oil Filters, as appropriate, and is free of contamination other than contamination normally  
1446 expected to be present as a result of the use, storage or spillage of the oil or filter. In the event  
1447 of non-collection, CONTRACTOR shall affix to the Used Oil or Used Oil Filter Container a Non-  
1448 Collection Notice explaining why Collection was not made. Prior to the end of the Work Day,  
1449 CONTRACTOR shall utilize the Customer Service System to notify CITY of any non-collection  
1450 occurrences. If non-collection is because the Used Oil or Filter was placed in an improper  
1451 container, CONTRACTOR shall also leave Used Oil or Used Oil Filter Containers in a number  
1452 sufficient to contain the Used Oil or Used Oil Filters set out, but not exceeding sixteen (16)  
1453 quarts, or two (2) Used Oil Filters per Dwelling Unit, along with the Non-Collection Notice.

1454 5.03.8 Spillage. CONTRACTOR shall carry oil absorbent material on all Used  
1455 Oil Collection vehicles and shall cleanup any Used Oil that spills during Collection, which has  
1456 leaked from the Used Oil or Used Oil Filter Container, or which spills or leaks during the time  
1457 the Used Oil or Used Oil Filter is in the Collection vehicle.

1458 5.03.9 Used Oil and Used Oil Filter Containers. Within three (3) Work Days of  
1459 receipt of a signed Used Oil and Filter Collection Service Agreement, CONTRACTOR shall, at  
1460 CONTRACTOR'S sole cost and expense, provide the Service Recipient or management of the  
1461 MFD Service Unit with a sufficient number of collection boxes for the storage of Used Oil and

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1462 Used Oil Filters. Each collection box shall contain six (6) ~~one-gallon plastic~~ Used Oil  
1463 ~~Ce~~ontainers, three (3) ~~plastic bags for~~ Used Oil Filters Containers, and one oil funnel. Design  
1464 of Used Oil and Used Oil Filter collection ~~Ce~~ontainers must be approved by the City  
1465 Representative, ~~and must comply with Section 9.10.1070 of the City of San Jose Municipal~~  
1466 ~~Code for double-walled construction.~~

1467 At the time CONTRACTOR Collects Used Oil from a MFD Service Unit,  
1468 CONTRACTOR shall, at CONTRACTORS sole cost and expense, leave at the premises one  
1469 (1) Used Oil Container for each Used Oil Container Collected and one (1) Used Oil Filter  
1470 Container for each Used Oil Filter Container Collected. CONTRACTOR shall keep the outside  
1471 of all Used Oil and Used Oil filter Containers clean and may re-use the containers until the  
1472 condition of the container makes it inappropriate for re-use.

1473 5.03.10 Segregation of Used Oil. CONTRACTOR shall at all times keep all  
1474 Used Oil and Used Oil Filters Collected pursuant to this Agreement segregated from other  
1475 materials. CONTRACTOR shall also keep all Used Oil and Used Oil Filters Collected pursuant  
1476 to this Agreement segregated from all other Used Oil and Used Oil Filters Collected by  
1477 CONTRACTOR or generated by CONTRACTOR until all CITY required measurements and  
1478 testing of the Used Oil have been completed. Such segregation includes segregation in the  
1479 Collection vehicles, in the holding tanks at the processing facility, and at all times the Used Oil  
1480 and Used Oil Filters are in the CONTRACTORS possession.

1481 5.03.11 Used Oil Processing. CONTRACTOR shall recycle all Used Oil  
1482 Collected pursuant to this Agreement to the extent feasible and shall properly dispose of all  
1483 Used Oil and Used Oil Filters that are contaminated or otherwise cannot be recycled.

1484 CONTRACTOR shall recycle the Used Oil only with persons who are  
1485 authorized by the State of California to recycle oil. In the event Used Oil or Used Oil Filters  
1486 Collected pursuant to this Agreement are contaminated to the extent that the Used Oil or Used  
1487 Oil Filters are a Hazardous Waste, as determined through titration or other CITY-approved  
1488 testing and require disposal as a Hazardous Waste, CONTRACTOR shall dispose of such  
1489 Used Oil or Used Oil filters, at CONTRACTOR'S own cost and expense in accordance with  
1490 applicable state and federal law.

1491 CONTRACTOR shall utilize the Customer Service System to immediately  
1492 notify the CITY of any contamination which renders the Used Oil unacceptable for recycling or  
1493 which requires disposal of the Used Oil or Used Oil Filters as a Hazardous Waste.

1494 5.04 MFD Recycling Service. This service will be governed by the following terms  
1495 and conditions:

1496 5.04.1 Conditions of Service. The CONTRACTOR shall provide MFD Recycling  
1497 Service to all MFD Service Units in the Service District whose Recyclable Materials are  
1498 properly containerized in Recycling Bins or ninety-six (96) gallon Recycling Carts, except as set

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1499 | forth in Section 5.04.4 below, where the Recycling Garbage Bins or Carts are accessible as set  
1500 | forth in Section 5.04.2 below.

1501 |                   The CONTRACTOR shall utilize the Customer Service System to report  
1502 | daily all situations that prevent or hinder Collection of any MFD Service Unit.

1503 |                   5.04.2 Accessibility. CONTRACTOR shall Collect all Recycling Bins or Carts  
1504 | that are readily accessible to the CONTRACTOR'S crew and vehicles and not blocked.  
1505 | However, CONTRACTOR shall provide "push services" as necessary during the provision of  
1506 | MFD Recycling Services. Push services shall include, but not be limited to dismount from the  
1507 | Collection vehicle, moving the Recycling Bins or Carts from their storage location for Collection  
1508 | and returning the Recycling Bins or Carts to their storage location.

1509 |                   5.04.3 Frequency of Service. This service shall be provided a minimum of once  
1510 | every week on a scheduled route basis on the same Work Day as MFD Solid Waste Collection  
1511 | Service. However, in those instances where the scheduled Collection day falls on a holiday as  
1512 | set forth in Section 3.06 herein, the Collection day will be delayed one day for the remainder of  
1513 | the week with normally scheduled Friday Collection Services being performed on Saturday.

1514 |                   5.04.4 Service Exceptions. Until October 1, 2002 or such earlier time as the  
1515 | CONTRACTOR has delivered a Recycling Bin or Cart to a MFD Service Unit, the Recyclable  
1516 | Materials of a MFD Service Unit that does not have a Recycling Bin or Cart may be  
1517 | containerized in any type of container whose loaded weight does not exceed forty (40) pounds.

1518 |                   5.04.5 Hours. CONTRACTOR shall provide MFD Recycling Service  
1519 | commencing no earlier than 6:00 a.m. and terminating no later than 6:00 p.m., Monday  
1520 | through Friday with no service on Saturday (except for holiday service as set forth in Section  
1521 | 3.06 of this Agreement) or Sunday. The hours, days, or both of Collection may be extended  
1522 | due to extraordinary circumstances or conditions with the prior written consent of the City  
1523 | Representative.

1524 |                   *(The following Section is to be inserted into the final District A Agreement*  
1525 | *in place of the preceding Section.)*

1526 |                   5.04.6 Hours. Except as set forth below, MFD Recycling Service shall be  
1527 | provided, commencing no earlier than 6:00 a.m. and terminating no later than 6:00 p.m.,  
1528 | Monday through Friday with no service on Saturday (except for holiday service as set forth in  
1529 | Section 3.06 of this Agreement) or Sunday. The hours, days, or both of Collection may be  
1530 | extended due to extraordinary circumstances or conditions with the prior written consent of the  
1531 | City Representative.

1532 |                   Collection in the Central Business District shall take place between  
1533 | 2:00 a.m. and 7:00 a.m. (SJMC 9.10.1500).

1534 |                   Collection in the Transit Mall Zone shall take place between 12:00 a.m.  
1535 | and 5:00 a.m. (SJMC 9.10.1520).

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1536 A map of the Central Business District and Transit Mall Zone is included  
1537 as Exhibit 9 of this Agreement.

1538 5.04.7 Manner of Collection. The CONTRACTOR shall provide MFD Recycling  
1539 Service with as little disturbance as possible and shall leave any Recycling Bin or Cart in an  
1540 upright position at the same point it was Collected without obstructing alleys, roadways,  
1541 driveways, sidewalks or mailboxes. The CONTRACTOR shall be responsible for sorting and  
1542 delivering Recyclable Materials to the Materials Recycling Facility as appropriate.

1543 CONTRACTOR'S employees providing MFD Recycling Service shall  
1544 follow the regular walk for pedestrians while on private property and shall not trespass nor  
1545 cross property to the adjoining premises unless the occupant or owner of both properties has  
1546 given permission. Care should be taken to prevent damage to property, including flowers,  
1547 shrubs, and other plantings.

1548 5.04.8 Recycling - Improper Procedure. Except as set forth below, the  
1549 CONTRACTOR shall not be required to Collect Recyclable Materials if the Service Recipient  
1550 does not segregate the Recyclable Materials from Residential Solid Waste. If Recyclable  
1551 Materials are contaminated through commingling with Residential Solid Waste, the  
1552 CONTRACTOR shall, if practical, separate the Residential Solid Waste from the Recyclable  
1553 Materials. The Recyclable Materials shall then be Collected and the Residential Solid Waste  
1554 shall be left in the Recycling Bin or Cart along with a Non-Collection Notice of why the  
1555 Residential Solid Waste is not considered a Recyclable Material. However, in the event the  
1556 Recyclable Materials and Residential Solid Waste are commingled to the extent that they  
1557 cannot easily be separated by the CONTRACTOR or the nature of the Residential Solid Waste  
1558 renders the entire Recycling Bin or Cart contaminated, the CONTRACTOR will leave the  
1559 Recycling Bin or Cart un-emptied along with a Non-Collection Notice which contains  
1560 instructions on the proper procedures for setting out Recyclable Materials. The  
1561 CONTRACTOR will utilize the Customer Service System to notify the CITY by the end of each  
1562 Work Day of the address(es) of any Service Recipient(s) whose Recyclable Materials were not  
1563 Collected that day and the reason they were not Collected. Upon notification from the CITY,  
1564 CONTRACTOR shall Collect the contaminated Recyclable Materials as part of the next  
1565 regularly scheduled MFD Solid Waste Collection and dispose of it at the Disposal Facility.

1566 ~~CONTRACTOR shall be compensated at one-fourth of the normal monthly service rates as set~~  
1567 ~~forth on Exhibit 1 to this Agreement.~~

1568 5.04.9 Spillage. The CONTRACTOR shall not be responsible for cleaning up  
1569 sanitary conditions around Recycling Bins or Carts caused by the carelessness of the Service  
1570 Recipient; however, the CONTRACTOR shall clean up any Recyclable Materials spilled from a  
1571 Recycling Bin or Cart by the CONTRACTOR or its employees. During transport, all Recyclable  
1572 Materials shall be contained, covered or enclosed so that leaking, spilling and blowing of the  
1573 Recyclable Materials is prevented. The CONTRACTOR shall be responsible for the immediate  
1574 clean-up of any spillage caused by the CONTRACTOR or its employees.

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1575                    5.04.10            Purchase and Initial Distribution of Recycling Bin or Carts. The  
1576 CONTRACTOR shall be responsible for the purchase and distribution of Recycling Bins or  
1577 Carts or both to all MFD Service Units in the Service District. CONTRACTOR shall complete  
1578 the initial distribution of Recycling Bins or Carts no later than October 1, 2002. The  
1579 CONTRACTOR shall deliver the Recycling Carts or Bins as shall be requested by the  
1580 management of each MSFD Service Unit and as is set forth in the service agreement required  
1581 by Section 5.08 of this Agreement. Recycling Bins and Carts shall be affixed with the CITY  
1582 recycling logo and meet the specifications set forth in Exhibits 5 and 6.

1583                    CONTRACTOR shall also distribute Recycling Bins or Carts or both to  
1584 new MFD Service Units that are added to CONTRACTOR'S Service District during the term of  
1585 this Agreement. The size of the Recycling Bin or Cart to be distributed will be in accordance  
1586 with service agreement required by Section 5.08 of this Agreement. Distribution of the  
1587 Recycling Bins and Carts shall be completed within five (5) Work Days of receipt of the signed  
1588 service agreement by the CONTRACTOR from the management of the MFD Service Unit.

1589                    5.04.11            Replacement of Recycling Bin or Carts. Care shall be taken by  
1590 CONTRACTOR'S employees to prevent damage to Recycling Bins or Carts by unnecessary  
1591 rough treatment. However, any Recycling Bin or Cart damaged by the CONTRACTOR shall be  
1592 replaced by the CONTRACTOR, at the CONTRACTOR'S expense, within five (5) Work Days  
1593 at no cost or inconvenience to the Service Recipient.

1594                    Upon notification to the CONTRACTOR by the CITY or a Service  
1595 Unit that the Service Units' Recycling Bin or Cart has been stolen or that it has been damaged  
1596 beyond repair through no fault of the CONTRACTOR, the CONTRACTOR shall deliver a  
1597 replacement Recycling Bin or Cart to such Service Unit within five (5) Work Days. The  
1598 CONTRACTOR shall utilize the Customer Service System to report the all Recycling Bin or  
1599 Cart replacements to CITY as provided in this Agreement.

1600                    Each MFD Service Unit shall be entitled to the replacement of  
1601 one (1) lost, destroyed, or stolen Recycling Cart or Bin during the life of this Agreement at no  
1602 cost to the Service Unit. Accordingly CONTRACTOR shall be compensated for the cost of  
1603 those replacements in excess of one (1) per MFD Service Unit during the life of the  
1604 Agreement, in accordance with the "Cart or Bin Exchange" Service Rate, as appropriate, set  
1605 forth in Exhibit 1 to this Agreement or as may be adjusted by the CITY as provided under the  
1606 terms of this Agreement.

1607                    5.04.12            Repair of Recycling Bins or Carts. CONTRACTOR shall be  
1608 responsible for repair of Recycling Bins or Carts. Within five (5) Work Days of notification by  
1609 the CITY or a Service Recipient of the need for such repairs, the CONTRACTOR shall repair  
1610 the Recycling Bin or Cart or if necessary, remove the Recycling Bin or Cart for repairs and  
1611 deliver a replacement Recycling Bin or Cart or both to the Service Recipient. The

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1612 CONTRACTOR shall utilize the Customer Service System daily to report repairs to City  
1613 Representative.

1614           5.04.13     Recycling Bin or Cart Exchange. Upon notification to the  
1615 CONTRACTOR by the CITY or a Service Recipient that a change in the size or number of the  
1616 Recycling Bins or Recycling Carts is required, the CONTRACTOR shall deliver such Recycling  
1617 Bins or Carts to such Service Recipient within five (5) Work Days. The CONTRACTOR shall  
1618 utilize the Customer Service System to report the exchange to City Representative. Each MFD  
1619 Service Unit shall be eligible to receive one (1) free Recycling Bin exchange or Recycling Cart  
1620 exchange per Agreement Year during the term of this Agreement. Accordingly,  
1621 CONTRACTOR shall be compensated for the cost of those exchanges in excess of one (1) per  
1622 Agreement Year, in accordance with the "Bin or Cart Exchange" service rate as set forth in  
1623 Exhibit 1 or as may be adjusted under the terms of this Agreement.

1624           5.04.14     Ownership of Recycling Bins. Ownership of Recycling Bins shall  
1625 rest with the CONTRACTOR except in the case of the termination of the Agreement prior to  
1626 the expiration of the initial term or extended terms due to the default of the CONTRACTOR.  
1627 Under such circumstances, the Recycling Bins shall, at no additional cost to the CITY, become  
1628 the property of the CITY and CONTRACTOR shall submit to the City Representative an  
1629 inventory of Recycling Bins, including their locations, together with all indicia of ownership, and  
1630 shall take all steps necessary to transfer ownership to CITY.

1631           5.04.15     Ownership of Recycling Carts. Ownership of Recycling Carts in  
1632 the possession of the CONTRACTOR during and after the term of this Agreement shall rest  
1633 with the CONTRACTOR. Ownership of Recycling Carts in the possession of a Service  
1634 Recipient during and after the term of this Agreement shall rest with the CITY.

1635           5.04.16     Cleaning. At the request of the City Representative or the MFD  
1636 Service Unit management, CONTRACTOR shall clean or, at CONTRACTOR'S option replace,  
1637 all Recycling Bins and Carts at the MFD Service Unit's premises. Such cleaning service shall  
1638 be at no cost to CITY or to the MFD Service Unit. CONTRACTOR shall not be obligated to  
1639 provide such service at no cost to any MFD Service Unit more often than one (1) time in any  
1640 Agreement Year.

1641           5.05     Material Recovery Facility. All Recyclable Materials Collected as a result of  
1642 performing Recycling Services shall be delivered to the Material Recovery Facility. Failure to  
1643 comply with this provision shall result in the levy of an administrative charge as specified in  
1644 Section 19 of this Agreement and may result in the CONTRACTOR being in default under this  
1645 Agreement.

1646           5.06     Inspections. The CITY shall have the right to inspect the CONTRACTOR'S  
1647 recycling vehicle and its contents at any time while the vehicle operating inside or outside the  
1648 CITY.



1685                   6.01.3 Review of Monthly Invoice by CONTRACTOR. CONTRACTOR shall  
1686 review the monthly invoice prepared by CITY and within ten (10) calendar days of receipt of  
1687 the invoice, the CONTRACTOR shall notify the City Representative of any discrepancies or  
1688 deficiencies in said invoice.

1689                   CITY shall make no base rate payment for any MFD Service Unit that is  
1690 not included on the list of MFD Service Units maintained by the CITY.

1691                   CONTRACTOR shall meet with the City Representative within ten (10)  
1692 calendar days of CITY'S receipt of notice of discrepancies or deficiencies to resolve any such  
1693 discrepancies or deficiencies and shall provide to the City Representative any documentation  
1694 relating to the discrepancy or deficiency that is requested by the City Representative or which  
1695 CONTRACTOR wishes to provide in support of CONTRACTORS calculations.

1696                   6.02 Payments to CONTRACTOR. Except as otherwise provided in this Agreement,  
1697 CITY shall make monthly payments to CONTRACTOR within thirty (30) calendar days of  
1698 CONTRACTOR'S approval of CITY'S invoice. In the event there are any amounts listed on the  
1699 invoice which remain in dispute after CONTRACTOR and City Representative discuss the  
1700 invoice pursuant to Section 6.01.3 CITY shall pay to CONTRACTOR the undisputed amounts  
1701 as provided in this Section

1702                   6.03 Adjustments to Rates Using Refuse Rate Index (RRI).

1703                   6.03.1 Refuse Rate Index (RRI). Beginning on July 1, 2003, and annually  
1704 thereafter, the CONTRACTOR shall, subject to compliance with all provisions of this Section,  
1705 receive an annual adjustment in the service rates in section A, B, C, D, E, and F.1.a and F.2.a  
1706 as set forth in Exhibit 1.

1707                   At the start of the second year of the Agreement (July 1, 2003), and  
1708 annually thereafter during the term of this Agreement, those service rates set forth in Section  
1709 6.03.1 above shall be increased or decreased by the percentage change in the Refuse Rate  
1710 Index (RRI) from the base month, which shall be December of the prior preceding year, to  
1711 December of the preceding year as contained in the most recent publication of the source  
1712 documents listed in Exhibit 3. Therefore, the first rate adjustment will be based on the  
1713 percentage change between the December 2001 indices and the December 2002 indices.

1714                   On or before April 15, 2003 and annually thereafter during the term this  
1715 Agreement, CONTRACTOR shall deliver to the CITY in the format as set forth in Exhibit 3, and  
1716 as may be further revised by the CITY, financial information for the specific services performed  
1717 under this Agreement for the preceding calendar year. If the CONTRACTOR fails to submit  
1718 the financial information in the required format prior to April 15th, it is agreed that the  
1719 CONTRACTOR waives the right to the RRI rate adjustment for that year. Failure to provide the  
1720 financial information does not preclude the CITY from applying the RRI using the prior years  
1721 financial data, or pro forma data if no prior year financial data is available, if that application  
1722 would result in a decrease in the affected service rates.

1723 Annual adjustments shall be made only in units of one cent (\$0.01).  
1724 Fractions less than one cent (\$0.01) shall not be considered in making adjustments. The  
1725 indices shall be truncated at four (4) decimal places for the adjustment calculations.

1726 If the failure to submit the information is the result of extraordinary or  
1727 unusual circumstances as demonstrated by the CONTRACTOR, the CITY, at its sole  
1728 discretion, may consider the request for the annual RRI rate adjustment.

1729 As of June 1, 2003 and annually thereafter during the term of this  
1730 Agreement, the CITY shall notice the CONTRACTOR of the RRI adjustment to the affected  
1731 service rates set forth in Exhibit 1.

### 1732 **ARTICLE 7.(B) DIVERSION**

1733 7.01 Diversion Requirements. CONTRACTOR is required to achieve a minimum  
1734 annual Residential Solid Waste (~~RSW~~)~~and Recyclable Materials~~ diversion rate of twenty five  
1735 percent (25%) per Service District the first calendar year, thirty percent (30%) per Service  
1736 District the second calendar year and, thirty five percent (35%) per Service District for each  
1737 calendar year thereafter, and a minimum annual Large Item diversion rate of fifty percent  
1738 (50%) per Service District per calendar year. The Residential Solid Waste ~~and Recyclable~~  
1739 ~~Materials~~ diversion rate will be measured as the net tons of Recyclable Materials sold divided  
1740 by the total tons of Residential Solid Waste and Recyclable Materials Collected, (Tons of  
1741 Recyclable Materials Sold/(Tons of Residential Solid Waste Collected + Tons of Recyclable  
1742 Materials Collected)); and the Large Item diversion rate will be calculated as the ~~net~~ tons of  
1743 Large Items sold or delivered to a recycler or reuser, as required by this Agreement, divided by  
1744 the total tons of Large Items Collected, (Tons of Large Items Sold/Tons of Large Items  
1745 Collected). The MFD diversion requirement will be calculated on a calendar year basis  
1746 beginning January 1, 2003. CONTRACTOR'S failure to meet the minimum diversion  
1747 requirements may result in Agreement termination or administrative charges.

1748 7.02 RSW Diversion Incentive Payment Calculation. CONTRACTOR'S eligibility for  
1749 the annual RSW diversion incentive payment shall be determined by CITY based on the  
1750 results of the data submitted by the CONTRACTOR through the Customer Service System  
1751 during the calendar year. In the event CONTRACTOR is determined to be eligible for the  
1752 annual RSW diversion payment, such payment shall be calculated as follows:

1753 7.02.1 The proposed RSW diversion incentive rate percentage as set forth on  
1754 Exhibit 1 will be multiplied by the sum of the total amount paid to the proposer for MFD Solid  
1755 Waste Collection Service for the calendar year, net of Bin Rental Rates, and the total amount  
1756 paid to the proposer for MFD Recycling Service for the calendar year, net of Bin Rental Rates,  
1757 as set forth in Sections A and B of Exhibit 1, to calculate the annual RSW diversion incentive  
1758 payment.

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1759           7.03 RSW Diversion Incentive Payment. CITY shall make the annual RSW diversion  
1760 incentive payment to CONTRACTOR on August 1<sup>st</sup> following the end of the calendar year in  
1761 which the RSW diversion incentive payment was earned.

1762                           **ARTICLE 5.(C) YARD TRIMMINGS COLLECTION SERVICES**

1763           The CONTRACTOR shall provide unlimited Yard Trimmings Collection Services in the  
1764 Service District.

1765           5.01 Residential Yard Trimmings Collection Service. This service will be governed by  
1766 the following terms and conditions:

1767                           5.01.1 On-Street Yard Trimmings Collection Services.

1768                           5.01.1.1 Conditions of Service. The CONTRACTOR shall provide  
1769 unlimited On-Street Yard Trimmings Collection Service to all Service Units in the Service  
1770 District whose Yard Trimmings are set out unbundled on a paved surface of the public  
1771 roadway, closest accessible roadway, or other such location agreed to by the CONTRACTOR  
1772 and Service Recipient, that will provide safe and efficient accessibility to the CONTRACTOR'S  
1773 Collection crew and vehicle.

1774                           The CONTRACTOR shall utilize the Customer Service System on a daily  
1775 basis to report all situations that prevent or hinder Collection at any premises.

1776                           5.01.1.2 Manner of Collection. The CONTRACTOR shall provide On-  
1777 Street Yard Trimmings Collection Service with as little disturbance as possible and shall  
1778 remove all Yard Trimmings except for normal Acceptable Residue. If CONTRACTOR'S access  
1779 to a Yard Trimmings set-out is blocked or inhibited by a Garbage or Recycling Cart or other  
1780 waste container, CONTRACTOR shall manually move the Garbage or Recycling Cart or other  
1781 waste container, Collect the Yard Trimmings and manually replace the Garbage or Recycling  
1782 Cart or other waste container where they can be properly Collected by the CITY-authorized  
1783 Collector.

1784                           5.01.1.3 Non-Collection. CONTRACTOR shall not be required to  
1785 Collect any Yard Trimmings as provided in this Section 5.01.1 where: Yard Trimmings are not  
1786 segregated from other waste materials; access is blocked or inhibited by vehicles or other  
1787 obstacles, other than Garbage or Recycling Carts or other waste containers as set forth in  
1788 Section 5.01.~~1.202~~ above; or the Yard Trimmings are commingled with Contaminants.

1789                           In the event CONTRACTOR does not Collect Yard Trimmings for any of  
1790 these reasons, CONTRACTOR shall leave a Non-Collection Notice at the Service Unit nearest  
1791 the Yard Trimmings set-out.

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1792                    5.01.2 Cart Collection Service.

1793                    5.01.2.1 Mandatory Yard Trimmings Cart Collection Service. The  
1794 CONTRACTOR shall provide unlimited Mandatory Yard Trimmings Cart Collection Service to  
1795 those Service Units in the Service District designated by the CITY through the Customer  
1796 Service System whose Yard Trimmings, except for overages, are properly containerized in a  
1797 Yard Trimmings Cart, and where the Yard Trimmings Cart has been placed within three (3) feet  
1798 of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other  
1799 such location agreed to by the CONTRACTOR and Service Recipient, that will provide safe  
1800 and efficient accessibility to the CONTRACTOR'S Collection crew and vehicle. Service Units  
1801 receiving Mandatory Cart Collection Service may handle overages as set forth in Section  
1802 5.01.4 below.

1803                    On or before October 1, 2001, CITY shall provide CONTRACTOR with a  
1804 list of Service Units receiving Mandatory Yard Trimmings Cart Collection Service. Prior to  
1805 March 1, 2002, CONTRACTOR shall review the list of Service Units receiving Mandatory Yard  
1806 Trimmings Cart Collection Service as provided by the CITY and shall provide the City  
1807 Representative with recommendations of additions or deletions to the list based on their  
1808 knowledge of the routes, the applicable City Code, and safety or logistical factors. The City  
1809 Representative shall review the recommendations and provide the CONTRACTOR with a final  
1810 list of Mandatory Yard Trimmings Cart Collection Service Units within thirty (30) days of receipt  
1811 of the recommendations from the CONTRACTOR.

1812                    The CONTRACTOR shall utilize the Customer Service System on a daily  
1813 basis to report all situations that prevent or hinder Collection at any premises.

1814                    5.01.2.2 Subscription Yard Trimmings Cart Collection Services.

1815                    The CONTRACTOR shall provide unlimited Subscription Yard  
1816 Trimmings Cart Collection Service to those Service Units in the Service District subscribing to  
1817 such service as shall be designated by the CITY through the Customer Service System whose  
1818 Yard Trimmings, except for overages, are properly containerized in a Yard Trimmings Cart, and  
1819 where the Yard Trimmings Cart has been placed within three (3) feet of the curb, swale, paved  
1820 surface of the public roadway, closest accessible roadway, or other such location agreed to by  
1821 the CONTRACTOR and Service Recipient, that will provide safe and efficient accessibility to  
1822 the CONTRACTOR'S Collection crew and vehicles. Service Units subscribing to Subscription  
1823 Yard Trimmings Cart Collection Service may also utilize the provisions of Section 5.01.1 above  
1824 and may handle overages as set forth in Section 5.01.4 below.

1825                    5.01.3 On-Premises Cart Service.

1826                    5.01.3.1 Non-Subscription On-Premises Cart Service. Notwithstanding  
1827 any term or definition set forth in this Agreement, on-premises Collection of Yard Trimmings  
1828 from a SFD Service Unit utilizing a Yard Trimmings Cart for the set out of their Yard Trimmings  
1829 shall be required if all adult occupants residing therein are have disabilities that prevent them

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1830 from setting their Yard Trimmings Cart at the curb for Collection and if a request for non-  
1831 subscription on-premises service has been made to, and approved by, the City Representative.  
1832 On or before May 1, 2002, the City Representative shall notify the CONTRACTOR in writing of  
1833 any Service Recipients requiring non-subscription on-premises service. Thereafter during the  
1834 term of this Agreement the City Representative shall notify the CONTRACTOR in writing of any  
1835 Service Recipients requiring non-subscription on-premises service, along with the date such  
1836 service is to begin. No additional monies shall be due to the CONTRACTOR for the provision  
1837 of non-subscription on-premises service.

1838                           5.01.3.2 Subscription On-Premises Cart Service. Notwithstanding any  
1839 term or definition set forth in this Agreement, the CONTRACTOR shall provide on-premises  
1840 Collection of Yard Trimmings from a SFD Service Unit to those Service Recipients subscribing  
1841 to such service, except that subscription on-premises cart Collection service shall not be  
1842 available in those instances where the on-premises Collection location of the Yard Trimmings  
1843 Cart is more than one hundred (100) yards from the normal curb set out location. The City  
1844 Representative shall notify the CONTRACTOR in writing of any Service Recipient requesting  
1845 subscription on-premises service along with the date such service is to begin. CONTRACTOR  
1846 shall be compensated for this service at the “on-premises” service rate as set forth in Exhibit 1  
1847 which is attached to and incorporated in this Agreement and as may be amended under the  
1848 terms of this Agreement.

1849                           5.01.3.3 Collection Day. CONTRACTOR shall provide on-premises  
1850 Collection on the same Work Day that On-Street Yard Trimmings Collection would otherwise be  
1851 performed for the Service Recipient.

1852                           5.01.4 Yard Trimmings Overages All Residential Yard Trimmings Collection  
1853 Services shall be unlimited. CONTRACTOR shall Collect Yard Trimmings overages from a  
1854 Mandatory or Subscription Yard Trimmings Cart Collection Service Recipient as long as the  
1855 overages are beside a full Yard Trimmings Cart and in bundles tied with twine or in a clearly  
1856 labeled can or other container provided by the Service Recipient. CONTRACTOR shall  
1857 provide Yard Trimmings labels for additional containers upon request of the Service Recipient.

1858 Subscription Yard Trimmings Cart Collection Service Recipients may also elect to place their  
1859 overages on-street in accordance with the Conditions of Service set forth in Section 5.01.1  
1860 above.

1861                           5.01.5 Non-Collection of Carts and Overages.

1862                           5.01.5.1 Carts. Except as set forth below in this Section 5.01.5.1, the  
1863 CONTRACTOR shall not be required to provide Cart Collection Service if the Service Recipient  
1864 does not segregate the Yard Trimmings from Contaminants. If Yard Trimmings are  
1865 contaminated, the CONTRACTOR shall, if practical, separate the Yard Trimmings from the  
1866 Contaminants. The Yard Trimmings shall then be Collected and the Contaminants shall be left  
1867 in the Yard Trimmings Cart along with a Non-Collection Notice explaining why the

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1868 Contaminants are not considered Yard Trimmings. However, in the event the Yard Trimmings  
1869 and Contaminants are commingled to the extent that they cannot easily be separated by the  
1870 CONTRACTOR or the nature of the Contaminants renders the entire Yard Trimmings Cart  
1871 contaminated, the CONTRACTOR will leave the Yard Trimmings Cart un-emptied along with a  
1872 Non-Collection Notice that contains instructions on the proper procedures for setting out Yard  
1873 Trimmings.

1874 5.01.5.2 CONTRACTOR shall have no obligation to Collect Yard  
1875 Trimmings overages as provided in Section 5.01.4 where: the Yard Trimmings container or  
1876 bundle exceeds the allowable weight limit of forty (40) pounds; a bundle exceeds five (5) feet  
1877 in length; the Yard Trimmings are in a container that is not clearly marked to indicate contents;  
1878 the Yard Trimmings contain Contaminants or; the Yard Trimmings from a Service Unit receiving  
1879 Mandatory Yard Trimming Cart Collection Service are not placed beside a full Yard Trimmings  
1880 Cart provided by CONTRACTOR.

1881 If CONTRACTOR does not Collect Yard Trimmings for any reason,  
1882 CONTRACTOR shall leave a Non-Collection Notice at the Service Unit in front of which the  
1883 Yard Trimmings are placed.

1884 CONTRACTOR shall utilize the Customer Service System daily to notify  
1885 the CITY of those Service Units where Non-Collection Notices were issued.

1886 CONTRACTOR shall utilize the Customer Service System to notify the  
1887 City Representative of Service Units with frequent Yard Trimmings overages, and the City  
1888 Representative shall require the Service Unit to obtain larger and/or additional Yard Trimmings  
1889 Carts.

1890 5.01.6 Christmas Trees. CONTRACTOR shall Collect all natural Christmas  
1891 trees, including flocked Christmas trees, set out by Service Units. Christmas trees shall be  
1892 Collected from the street from On-Street and Subscription Yard Trimmings Collection Service  
1893 Recipients and from the curb from SFD Mandatory Yard Trimmings Cart Collection Service  
1894 Recipients. In the case of MFD Service Units, Christmas trees shall be Collected in the  
1895 manner agreed upon between the management of the MFD Service Unit and the  
1896 CONTRACTOR. CONTRACTOR shall utilize the required MFD service agreement to specify  
1897 the place and manner in which Christmas trees will be Collected for each MFD Service Unit.  
1898 There shall be no additional payment to the CONTRACTOR for the Collection of Christmas  
1899 trees.

1900 5.01.7 Fall Leaf Removal. CONTRACTOR shall remove piles of leaves from all  
1901 public streets served by the Residential Street Sweeping program, and from all other public  
1902 streets in front of or adjacent to a SFD, ~~or~~ MFD, or Small Civic Service Unit.

1903 5.01.8 Service Agreements. CONTRACTOR shall obtain a signed service  
1904 agreement from each SFD Service Unit complex or development with private streets, from  
1905 each MFD Service Unit and from each Small Civic Service Unit for the provision of Residential

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1906 Yard Trimmings Collection Services. CONTRACTOR shall provide the CITY with a copy of all  
1907 signed service agreements. The City Representative will assist the CONTRACTOR in  
1908 contacting representatives of Small Civic Service Units. The service agreement will contain the  
1909 following information: name and address of complex, ~~or~~ homeowners association, or Small  
1910 Civic Service Unit; number of units; name, address and phone number of contact person;  
1911 permission for CONTRACTOR to enter the private streets; type of Residential Yard Trimmings  
1912 Collection Service desired (On-Street or Cart); number and location of carts and/or on-street  
1913 set-out locations, and manner and location of Christmas tree removal.

1914 As is set forth in this Article, CONTRACTOR is required to provide  
1915 Residential Yard Trimmings Collection Services to all Service Units in the Service District  
1916 unless such service is specifically refused. However CONTRACTOR will not be paid for the  
1917 provision of these services to those Service Units for which service agreements are required  
1918 until the service agreements are provided to the CITY in the required manner. In the event the  
1919 CONTRACTOR is unable to obtain a signed service agreement from a Service Unit through no  
1920 fault of the CONTRACTOR the CITY will assist the CONTRACTOR in resolving the situation.  
1921 However, the CONTRACTOR will not be compensated for those Service Units that refuse  
1922 service.

1923 5.01.9 Frequency and Day of Service. This service shall be provided once  
1924 every week on a scheduled route basis. Residential Yard Trimmings Collection Services to  
1925 SFD Service Units shall be provided on the same Work Day as SFD Solid Waste Collection  
1926 Service. Residential Yard Trimmings Collection Services to MFD and Small Civic Service Units  
1927 shall be provided in the most efficient manner possible taking into the account the SFD Service  
1928 Unit scheduling requirements. However, in those instances where the scheduled Collection  
1929 day falls on a holiday as set forth in Section 3.06 herein, the Collection day will be delayed one  
1930 day for the remainder of the week with normally scheduled Friday Collection Services being  
1931 performed on Saturday.

1932 5.01.10 Hours of Collection. Residential Yard Trimmings Collection  
1933 Service shall be provided, commencing no earlier than 6:00 a.m. and terminating no later than  
1934 6:00 p.m., Monday through Friday with no service on Saturday (except for holiday service as  
1935 set forth in Section 3.06 of this Agreement) or Sunday. The hours, days, or both of Collection  
1936 may be extended due to extraordinary circumstances or conditions with the prior **written**  
1937 consent of the City Representative.

1938 *(The following Section will be inserted into the final District A Agreement*  
1939 *in place of the preceding Section)*

1940 5.01.11 Hours of Collection. Except as set forth below, Residential Yard  
1941 Trimmings Collection Service shall be provided, commencing no earlier than 6:00 a.m. and  
1942 terminating no later than 6:00 p.m., Monday through Friday with no service on Saturday  
1943 (except for holiday service as set forth in Section 3.06 of this Agreement) or Sunday. The



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1981 size of the carts to be provided to each Service Unit. CONTRACTOR shall complete the initial  
1982 distribution of Yard Trimmings Carts no later than October 1, 2002. Yard Trimmings Carts shall  
1983 be thirty-two (32), sixty four (64), or ninety-six (96) gallons in capacity, affixed with the CITY  
1984 logo and meet the specifications set forth in Exhibit 5.

1985 CONTRACTOR shall also distribute fully assembled and functional Yard  
1986 Trimmings Carts to new Service Units requiring or subscribing to Mandatory or Subscription  
1987 Yard Trimmings Cart Collection Service, that are added to CONTRACTOR'S Service District  
1988 during the term of this Agreement. The CITY will provide the CONTRACTOR with address of  
1989 new Service Units requiring Yard Trimmings Carts and the number and size of the carts to be  
1990 provided to each Service Unit. The distribution shall be completed within five (5) Work Days of  
1991 receipt of the new Service Unit address from the City Representative.

1992 5.01.16 Replacement of Yard Trimmings Carts. Care shall be taken by  
1993 CONTRACTOR'S employees to prevent damage to Yard Trimmings Carts by unnecessary  
1994 rough treatment. However, any Yard Trimmings Cart damaged by the CONTRACTOR shall be  
1995 replaced by the CONTRACTOR, at the CONTRACTOR'S expense, within five (5) Work Days  
1996 of notification from the CITY, at no cost or inconvenience to the Service Recipient.

1997 Upon notification to the CONTRACTOR by the CITY or a Service  
1998 Recipient that the Service Recipients Yard Trimmings Cart has been stolen or that it has been  
1999 damaged beyond repair through no fault of the CONTRACTOR, the CONTRACTOR shall have  
2000 sufficient inventory of Yard Trimmings Carts on hand to deliver a replacement Yard Trimmings  
2001 Cart to such Service Recipient within five (5) Work Days. The CONTRACTOR shall utilize the  
2002 Customer Service System daily to report all Yard Trimmings Cart replacements to CITY.

2003 Each Service Recipient shall be entitled to the replacement of one (1)  
2004 lost, destroyed, or stolen Yard Trimmings Cart during the life of this Agreement at no cost to  
2005 the Service Recipient. Accordingly, CONTRACTOR shall be compensated for the cost of  
2006 those replacements in excess of one (1) per Service Recipient during the life of the  
2007 Agreement, in accordance with the Yard Trimmings "Cart Exchange" service rate set forth in  
2008 Exhibit 1 or as may be adjusted by the CITY under the terms of this Agreement.

2009 CONTRACTOR understands and agrees that this provision is intended  
2010 to be applied on a per Service Recipient basis, not a per Service Unit basis.

2011 5.01.17 Repair of Yard Trimmings Carts. CONTRACTOR shall be  
2012 responsible for repair of Yard Trimmings Carts in the areas of hinged lids, wheels and axles.  
2013 Within five (5) Work Days of notification by the CITY or a Service Recipient of the need for  
2014 such repairs, the CONTRACTOR shall repair the yard Trimmings Cart or if necessary arrange  
2015 to remove the Yard Trimmings Cart for repairs and to deliver a replacement Yard Trimmings  
2016 Cart to the Service Recipient. The CONTRACTOR shall utilize the Customer Service System  
2017 daily to report all Yard Trimmings Cart repairs to City Representative.

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2018                    5.01.18        Yard Trimmings Cart Exchange.    Upon notification to the  
2019 CONTRACTOR by the City Representative or a Service Recipient that a change in the size of  
2020 the Yard Trimmings Cart is required, the CONTRACTOR shall have sufficient inventory of Yard  
2021 Trimmings Carts on hand to be able to deliver such Yard Trimmings Cart(s) to such Service  
2022 Recipient within five (5) Work Days. The CONTRACTOR shall utilize the Customer Service  
2023 System daily to report all Cart exchanges to City Representative. Each Service Unit shall be  
2024 eligible to receive one (1) free Yard Trimmings Cart exchange per Agreement Year during the  
2025 term of this Agreement. Accordingly CONTRACTOR shall be compensated for the cost of  
2026 those exchanges in excess of one (1) per Agreement Year, in accordance with the Yard  
2027 Trimmings “Cart Exchange” service rate as set forth in Exhibit 1 or as may be adjusted under  
2028 the terms of this Agreement.

2029                    5.01.19        Ownership of Yard Trimmings Carts.    Ownership of Yard  
2030 Trimmings Carts shall rest with the CONTRACTOR, except that ownership of Yard Trimmings  
2031 Carts in the possession of a Service Recipient at the end of this Agreement shall rest with the  
2032 CITY.

2033                    5.01.20        Small Civic Service Unit Collection.    CONTRACTOR shall provide  
2034 weekly Collection of Yard Trimmings generated by those Small Civic Service Units set forth on  
2035 Exhibit 7 to this Agreement. The Yard Trimmings will be Collected through the use of On-  
2036 Street Yard Trimmings Collection Service, or Mandatory or Subscription Yard Trimmings Cart  
2037 Collection Service, depending upon which service is provided in the block face occupied by or  
2038 adjacent to the Small Civic Service Unit and the method of service which is most feasible for  
2039 each specific location. CONTRACTOR shall be compensated at the SFD rate for those Small  
2040 Civic Service Units for which a signed service agreement has been provided to the CITY.

2041                    Where necessary, CONTRACTOR shall enter neighborhood parks or  
2042 community gardens to Collect Yard Trimmings. CONTRACTOR shall not be required to  
2043 operate their equipment on a unpaved surface. CONTRACTOR shall enter locked community  
2044 gardens and neighborhood parks where necessary. CITY shall provide keys to locked Small  
2045 Civic Service Units. ~~A list of Small Civic Service Units is provided in Exhibit 7.~~

2046                    ~~5.01.14~~5.01.20.1 Non-Collection of Small Civic Service Units.  
2047 CONTRACTOR shall have no obligation to Collect Yard Trimmings as provided in this Article  
2048 Section where the Yard Trimmings contain Contaminants. If this occurs and there is no  
2049 location to leave a Non-Collection Notice, CONTRACTOR shall complete a Non-Collection  
2050 Notice, send a copy to the City Representative, and utilize the Customer Service System daily  
2051 to notify the CITY of the non-collection.

2052                    5.02    Large Civic Service Unit Yard Trimming Collection Services.    CONTRACTOR  
2053 shall provide Civic Yard Trimmings Collection Services to Large Civic Service Units in the  
2054 manner set forth in Sections 5.02.1, 5.02.2, or 5.02.3 below. Such Yard Trimmings shall be

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2055 stored loose in bunkers or loose in Roll-Off Containers and CONTRACTOR shall utilize the  
2056 Collection method as determined by CITY'S yard staff.

2057 If Yard Trimmings contain Contaminants CONTRACTOR shall leave a  
2058 Non-Collection Notice and shall utilize the Customer Service System to notify CITY of the  
2059 Contaminants and their location so that CITY staff may remove the Contaminants.

2060 CONTRACTOR shall Collect all ~~Large Civic Service Unit~~ Yard Trimmings  
2061 separately ~~form~~from all other Yard Trimmings and shall have the Civic Yard Trimmings weighed  
2062 separately at the processing facility. CONTRACTOR shall be compensated for this service at  
2063 the "Large Civic Collection & Pruning" ~~Service Unit~~ per ton service rate set forth on Exhibit 1  
2064 and as may be adjusted under the terms of this Agreement.

2065 5.01.15.02.1 On-Call Service. Within three (3) Work Days of receipt of a written  
2066 request from the CITY, CONTRACTOR shall Collect Civic Yard Trimmings generated by CITY  
2067 crews at Large Civic Service Units as set forth in Exhibit 8 and as may be amended.  
2068 CONTRACTOR shall be compensated for this service at the "Large Civic Collection & Pruning"  
2069 per ton service rate set forth in Exhibit 1 and as may be adjusted under the terms of this  
2070 Agreement.

2071 5.02.2 Weekly Collection Service. Within five (5) Work Days of receipt of a  
2072 written request from the CITY, CONTRACTOR shall begin to provide weekly Collection of Civic  
2073 Yard Trimmings from all Large Civic Service Units. Such weekly Collection shall continue until  
2074 written notification is received by CONTRACTOR from the CITY to discontinue said weekly  
2075 Collection or upon the termination of this Agreement if written notice to discontinue the weekly  
2076 Collection is not received from the CITY. In addition, on-call service may also be requested on  
2077 an as-needed basis. CONTRACTOR shall be compensated for these services at the "Large  
2078 Civic Collection & Pruning" per ton service rates set forth in Exhibit 1 and as may be adjusted  
2079 under the terms of this Agreement.

2080 5.02.3 Street Tree Prunings Collection. The City Representative may authorize  
2081 Collection of Civic Yard Trimmings generated by City crews other than those stored at CITY  
2082 ~~y~~Yards, such as those generated in the structural pruning of street trees, placed loose in the  
2083 street. CONTRACTOR shall Collect such pick-ups separately from other Yard Trimmings  
2084 Collections and shall have the materials weighed separately at the Yard Trimmings Processing  
2085 facility. CONTRACTOR shall be compensated for this service at the "Large Civic Collection &  
2086 Pruning" per ton service rate set forth on Exhibit 1 and as may be adjusted under the terms of  
2087 this Agreement

2088 5.03 Home Composting Bin Delivery. CONTRACTOR shall deliver home composting  
2089 bins to SFD and MFD Service Units on an on-going basis within five (5) Work Days of receipt  
2090 of written notification from the CITY. Home composting bins shall be delivered to a location on  
2091 the premises specified by the Service Recipient (e.g. doorstep, front porch). However,  
2092 CONTRACTOR shall not be required to deliver a home composting bin to a backyard or side

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2093 yard. Home composting bins shall be provided by the CITY. CONTRACTOR shall provide  
2094 storage for an inventory of CITY-provided Home composting bins and shall account for all bins  
2095 received and delivered. CONTRACTOR shall utilize the Customer Service System to provide  
2096 the City with a daily inventory report documenting the number of bins received, bins delivered,  
2097 and bins in storage. CONTRACTOR shall be compensated for this service at the "Delivery of  
2098 Home Composting Bins" service rate set forth on Exhibit 1 and as may be adjusted under the  
2099 terms of this Agreement

2100           5.04 Yard Trimmings Processing Services. CONTRACTOR shall ensure that all Yard  
2101 Trimmings Collected pursuant to this Agreement are diverted from the landfill in accordance  
2102 with AB 939 and subsequent legislation and regulations to one or more of the approved  
2103 products as listed in Exhibit 21, which is attached to and incorporated to this Agreement, and  
2104 as may be amended from time to time.

2105           CONTRACTOR shall ensure that the Yard Trimmings Collected pursuant to this  
2106 Agreement are not disposed of in a landfill or utilized as alternative daily cover (ADC) at a  
2107 landfill without prior written consent from the Director of the Environmental Services  
2108 Department. Only incidental residue (5% of incoming weight) may be landfilled or used as  
2109 alternative daily cover.

2110           ~~5.04.15.04.1~~ Yard Trimmings Processing Facility. CONTRACTOR shall deliver  
2111 all Collected Yard Trimmings to a fully permitted Yard Trimmings Processing Facility or a fully  
2112 permitted Yard Trimmings transfer station. All expenses related to Yard Trimmings processing  
2113 and marketing will be the sole responsibility of CONTRACTOR.

2114           5.04.1.1 Inspection. CITY shall have the right to make on-site  
2115 inspections of the Yard Trimmings Processing Facility at any time during normal business  
2116 hours or any other time the facility is open to the public.

2117           5.04.2 Approved Products. CONTRACTOR shall ensure that all Yard  
2118 Trimmings Collected pursuant to this Agreement are processed only into the approved  
2119 products listed in Exhibit 21. In the event additional products are identified by CONTRACTOR  
2120 or processor, CONTRACTOR may make written request for approval of such additional  
2121 products to the Director of Environmental Services. However, CONTRACTOR shall not  
2122 process, or allow processing of, Yard Trimmings delivered pursuant to this Agreement into any  
2123 such additional products unless such additional products are approved by the Director in  
2124 writing. It is expressly understood that the Director may reject additional products and that  
2125 nothing herein shall in any way be deemed to require the Director to authorize any additional  
2126 approved products.

2127           5.04.3 Weight Data. CONTRACTOR shall obtain weight data for all Yard  
2128 Trimmings delivered by CITY or by the CONTRACTOR, all other incoming Yard Trimmings  
2129 delivered to the Yard Trimmings Processing Facility, all Yard Trimmings Processing Residue  
2130 removed from the delivered Yard Trimmings, and all materials shipped off-site for processing.

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2131 Scales from which the weight data is obtained shall be registered with the County Department  
2132 of Weights and Measures and shall be regularly maintained to ensure their reliability and  
2133 continued functioning. Current certificates of registration, inspection reports and all  
2134 maintenance records shall be made available for review by CITY upon receipt of written  
2135 request from the City Representative. Scales shall be operated in the same manner as  
2136 required by State weigh master regulations

2137 5.04.4 Compost Requirements. CONTRACTOR shall ensure, and document  
2138 to the satisfaction of the CITY, that at least fifty percent (50%), by weight, of the Yard  
2139 Trimblings Collected under this Agreement are composted such that the resulting compost has  
2140 undergone the Process to Further Reduce Pathogens (PFRP) as outlined in "Standards for the  
2141 Use and Disposal of Sewage Sludge" 40 Code of Federal Regulations Part 503 dated  
2142 February 19, 1993, Appendix B to Part 503-Pathogen Treatment process, item B page 9404  
2143 and has been composted for at least 30 days.

2144 5.04.45.04.5 Finished Product Quantities. In addition to the compost  
2145 requirements set forth in Section 5.04.4 above, CONTRACTOR shall ensure that no at least  
2146 fifty percent (50%) of the finished product is compost that has undergone the Process to  
2147 Further Reduce Pathogens (PRFP) as outlined in "Standards for the Use and Disposal of  
2148 Sewage Sludge" 40 Code of Federal Regulations Part 503 dated February 19, 1993, Appendix  
2149 B to Part 503-Pathogen Treatment process, item B page 9404 and has been composted for at  
2150 least 30 days. No more than five percent (5%), by weight, of the material Collected in any  
2151 calendar quarter beginning July 1, 2002 shall be disposed as Yard Trimblings Processing  
2152 Residue. The balance can be processed as any of the approved products as listed in Exhibit  
2153 21.

2154 5.04.55.04.6 Ownership of Yard Trimblings. Ownership of Yard Trimblings shall  
2155 pass to CONTRACTOR at the time the Yard Trimblings are set out for Collection.

2156 5.04.65.04.7 CITY'S Use of Finished Products. CONTRACTOR shall make  
2157 available to CITY (740 tons in District A; 500 tons in District B and 760 tons in District C) of  
2158 finished products per year at no additional cost to CITY. CITY will notify CONTRACTOR as to  
2159 the CITY'S needs for delivery of finished products throughout the year. CITY shall select the  
2160 types and quantities of finished product for CITY use. Compost or wood chips shall be  
2161 delivered by CONTRACTOR at no additional cost to the CITY.

2162 CONTRACTOR shall make the Yard Trimblings Processing Facility  
2163 accessible to CITY vehicles picking up CITY'S finished products and load such finished  
2164 products onto CITY vehicles at no charge during normal operating hours Monday through  
2165 Friday. Notwithstanding the foregoing, nothing herein shall require CONTRACTOR to operate  
2166 the facility at any times not allowed by any permit or approvals issued for the facility.

2167 5.04.75.04.8 Additional Provisions. CITY may elect to waive its option to utilize  
2168 the full amount of finished products during any Agreement Year of this Agreement. If CITY

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2169 does not take delivery of finished products made available by CONTRACTOR to CITY within  
2170 three (3) months following the end of an Agreement Year, CONTRACTOR'S obligation to  
2171 deliver finished products for said Agreement Year shall be deemed to be satisfied. CITY shall  
2172 provide to CONTRACTOR a written schedule of CITY'S requirements for finished products by  
2173 June 30 of each Agreement Year.

2174 CONTRACTOR shall provide access to the facility during regular  
2175 business hours in order for CITY to pick up finished products. CONTRACTOR shall deliver  
2176 finished products to CITY upon request by the City Representative. Nothing in this Agreement  
2177 shall be deemed to require or obligate CITY to request or accept delivery of any processed  
2178 Yard Trimmings from CONTRACTOR other than amounts of finished products as described  
2179 herein, with the requests for processed Yard Trimmings to be at CITY'S sole discretion.

2180 CITY will not sell finished products to any person or corporation. CITY  
2181 will not give away finished products to any single person or corporation in excess-of two (2)  
2182 cubic yards per person or corporation per CITY-sponsored event without the consent of  
2183 CONTRACTOR.

2184 5.04.85.04.9 Annual Reconciliation. During the term of this Agreement,  
2185 CONTRACTOR shall make available to CITY the tons of finished products specified in Section  
2186 5.04.65046. If upon the last day of the Agreement Year of any Agreement Year of this  
2187 Agreement, CONTRACTOR has not made available the required amount of the finished  
2188 product, CITY will be credited for the amount remaining and this credit shall be carried over to  
2189 the next Agreement Year. If at the end of this Agreement, credit is still due to CITY, the cost of  
2190 these materials will be deducted from CONTRACTOR'S last payment .

2191 The cost of these materials will be based at the average rate being  
2192 charged by area suppliers for similar materials, less ten percent (10%). Should the cost of  
2193 materials exceed CONTRACTOR'S last payment, CITY will bill CONTRACTOR for the said  
2194 amount and CONTRACTOR shall remit payment to CITY in full within forty-five (45) days of  
2195 receipt of the invoice

## 2196 **ARTICLE 6.(C) CHARGES AND RATES**

2197 6.01 Yard Trimmings Collection Services. The CITY shall be responsible for the  
2198 billing and collection of payments for all Yard Trimmings Collection Services. The CITY shall  
2199 initially pay the CONTRACTOR for Yard Trimmings Collection Services in accordance with the  
2200 rates established in Exhibit 1 and as may subsequently be adjusted pursuant to this  
2201 Agreement.

2202 6.01.1 Partial Month Service. If, during a month, a Service Unit is added to or  
2203 deleted from CONTRACTOR'S Yard Trimmings Service Unit list, the billing for such Service  
2204 Unit shall be pro-rated as follows: (1) if the Service Unit received Collection Service for at least  
2205 sixteen (16) calendar days during the month, CONTRACTOR shall be compensated for that

2206 Service Unit at the full monthly rate; (2) if the Service Unit received Collection Service for less  
2207 than sixteen (16) calendar days during the month, CONTRACTOR shall not be compensated  
2208 for that Service Unit for that month.

2209           6.01.2 Production of Monthly Invoices. CITY shall produce a monthly invoice for  
2210 services received under this Agreement no later than the tenth (10<sup>th</sup>) day of the month  
2211 following the month such services were rendered.

2212           6.01.3 Review of Monthly Invoice by CONTRACTOR. CONTRACTOR shall  
2213 review the monthly invoice prepared by CITY and within ten (10) calendar days of receipt of  
2214 the invoice shall notify the City Representative of any discrepancies or deficiencies in said  
2215 invoice.

2216           CITY shall make no base rate payment for any Service Unit that is not  
2217 included on the list of Service Units maintained by the CITY nor for any Service Unit for which  
2218 a service agreement is required and which service agreement has not been received by the  
2219 CITY.

2220           CONTRACTOR shall meet with the City Representative within ten (10)  
2221 calendar days of CITY'S receipt of notice of discrepancies or deficiencies to resolve any such  
2222 discrepancies or deficiencies and shall provide to the City Representative any documentation  
2223 relating to the discrepancy or deficiency that is requested by the City Representative or which  
2224 CONTRACTOR wishes to provide in support of CONTRACTORS calculations.

2225           6.02 Payments to CONTRACTOR. Except as otherwise provided in this Agreement,  
2226 CITY shall make monthly payments to CONTRACTOR within thirty (30) calendar days of  
2227 CONTRACTOR'S approval of CITY'S invoice. In the event there are any amounts listed on the  
2228 invoice which remain in dispute after CONTRACTOR and City Representative discuss the  
2229 invoice pursuant to Section 6.01.3 CITY shall pay to CONTRACTOR the undisputed amounts  
2230 as provided in this Section.

2231           6.03 Adjustments to Rates Using Refuse Rate Index (RRI). Beginning on July 1,  
2232 2003, and annually thereafter, the CONTRACTOR shall, subject to compliance with all  
2233 provisions of this Section, receive an annual adjustment in the service rates on lines A. 1- 4  
2234 and B. 1-3 of Exhibit 1.

2235           6.03.1 At the start of the second year of the Agreement (July 1, 2003), and  
2236 annually thereafter during the term of this Agreement, the service rates referenced in Section  
2237 6.03 above shall be increased or decreased by the percentage change in the Refuse Rate  
2238 Index (RRI) from the base month, which shall be December of the prior preceding year, to  
2239 December of the preceding year as contained in the most recent publication of the source  
2240 documents listed in Exhibit 3 which is attached to and incorporated in this Agreement.  
2241 Therefore, the first rate adjustment will be based on the percentage change between the  
2242 December 2001 indices and the December 2002 indices.



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2276                   **ARTICLE 5.(D) RESIDENTIAL STREET SWEEPING SERVICES**

2277                   The CONTRACTOR shall provide Residential Street Sweeping Services in the Service  
2278 District.

2279                   5.01 Residential Street Sweeping Service. This service will be governed by the  
2280 following terms and conditions:

2281                   5.01.1 Manner of Service. The CONTRACTOR shall provide a complete sweep  
2282 of all Curb Miles on all publicly maintained Residential Streets located within the Service  
2283 District. Within any Curb Mile, CONTRACTOR shall be responsible for sweeping all curbs  
2284 including Median Islands and the corners from any cross street intersecting the subject street.  
2285 However, CONTRACTOR shall not be responsible for sweeping Traffic Islands. This service  
2286 shall include the Collection of debris and Acceptable Residue remaining after the Collection of  
2287 Yard Trimmings. CONTRACTOR shall obey all laws governing the operation of the sweepers  
2288 on a public street. The CONTRACTOR shall perform its operations so that sweepers are  
2289 traversing their routes in the normal direction of traffic.

2290                   5.01.2 Water. The CONTRACTOR shall obtain water services from the  
2291 appropriate water utility companies for the water necessary in the street sweeping operation.  
2292 The cost of the water shall be borne by the CONTRACTOR. The proper volume and pressure  
2293 shall be supplied by the sweeper at all times to adequately control dust during the sweeping  
2294 operation. The CITY may direct the CONTRACTOR to use reclaimed or recycled water due to  
2295 increased availability of reclaimed water.

2296                   5.01.3 Sweeper Speed. The CONTRACTOR shall operate the sweepers  
2297 between 5 and 6 miles per hour when sweeping or when the brooms are down, unless the  
2298 CONTRACTOR can demonstrate that the sweeper can operate efficiently and safely at a  
2299 higher speed. The CITY will use industry standards, Environmental Protection Agency  
2300 information, and manufacturer's recommendation on the speed of sweepers when considering  
2301 speeds higher than 5-6 miles per hour.

2302                   5.01.4 Width of Sweeper Path. The CONTRACTOR shall sweep a path  
2303 with all brooms down of no less than eight (8) feet wide unless parked vehicles, structures, and  
2304 other objects prohibit the safe sweeping of this path width. The path shall begin at the face of  
2305 the curb, and include flow line of the gutter. Unless blocked by parked cars, Garbage,  
2306 Recycling or Yard Trimmings Carts or Yard Trimmings piles, the curb and gutter shall always be  
2307 included within the sweeper path.

2308                   5.01.5 Frequency and Day of Service. This service shall be provided once  
2309 every month on a scheduled route basis. Curb sweeps shall be scheduled on the Work Day  
2310 following the normal Yard Trimmings Collection Service day. However, in those instances  
2311 where the scheduled Street Sweeping Service day falls on a holiday as set forth in Section  
2312 3.06 herein, the Street Sweeping Service day will be delayed one day for the remainder of the  
2313 week with normally scheduled Friday Street Sweeping Services being performed on Saturday.

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2314 In the event the Yard Trimmings Collection day is moved to Saturday as a result of a holiday,  
2315 the Residential Street Sweeping Service will be performed on Monday.

2316           5.01.6 Hours of Service. Street Sweeping Service shall be provided,  
2317 commencing no earlier than 7:00 a.m. and terminating no later than 5:00 p.m., Monday  
2318 through Friday with no service on Saturday, except for holiday service as set forth in Section  
2319 3.06 of this Agreement, or Sunday. The hours, days, or both of service may be extended due  
2320 to extraordinary circumstances or conditions with the prior verbal consent of the City  
2321 Representative.

2322           5.01.7 Dumpsites. CONTRACTOR shall establish and maintain a list indicating  
2323 an assigned dumpsite location for every route. Dumpsite locations shall be within the CITY  
2324 right-of-way and located within a reasonable distance of every route served. To minimize the  
2325 impact on CITY streets, the CONTRACTOR may use the same dumpsite for multiple routes.  
2326 Every dumpsite location shall be approved by the City Representative, and shall be used  
2327 whenever the associated route(s) are swept. CONTRACTOR shall clearly post signs at all  
2328 dumpsites indicating "Residential Street Sweeping Debris Only" to prevent illegal dumping.  
2329 CONTRACTOR shall utilize Roll-Off Containers at the dumpsites. To the extent feasible the  
2330 containers shall be water-tight. All Sweep Waste left at the site shall be Collected and the area  
2331 shall be swept by the CONTRACTOR prior to the end of the Work Day. CONTRACTOR shall  
2332 use any measures necessary to ensure that no runoff from the debris ends up in the storm  
2333 water system in accordance with BMP Guidelines for Non-Point Source Pollutants. Failure to  
2334 use a dumpsite or failure to properly maintain a dumpsite shall result in administrative charges  
2335 as described in Article 19.

2336           5.01.8 Spillage. During hauling, all Sweep Waste shall be contained, covered  
2337 or enclosed so that leaking, spilling and blowing of the Sweep Waste is prevented. The  
2338 CONTRACTOR shall be responsible for the immediate cleanup of any spillage caused by the  
2339 CONTRACTOR.

2340           ~~5.01.9 Communications. Prior to rendering any Residential Street Sweeping~~  
2341 ~~Services, CONTRACTOR shall equip each sweeper with a two-way radio unit of sufficient~~  
2342 ~~power in order to provide direct communication among the equipment operators, field~~  
2343 ~~supervisor, and CITY inspectors. The radios shall be on the CONTRACTOR'S frequency.~~  
2344 ~~CONTRACTOR shall also furnish the CITY with a portable two-way radio, including a~~  
2345 ~~recharging base unit, to enable conversations between CITY staff and the sweeper drivers.~~  
2346 ~~The radio unit shall become the property of the CITY. CONTRACTOR shall be responsible for~~  
2347 ~~normal maintenance of all the radios during the term of the Agreement including those~~  
2348 ~~furnished to the CITY. If the radio supplied fails to perform, CONTRACTOR shall repair or~~  
2349 ~~replace the radio within 7 days of verbal notice. CONTRACTOR'S supervisor shall also be~~  
2350 ~~equipped with a cellular telephone during service hours.~~

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2351 5.01.105.01.9 Changes in Streets. As neighborhoods are annexed to the CITY  
2352 or as new streets are constructed and accepted by the CITY, streets may or may not be added  
2353 to the Residential Street Sweeping Service program at the CITY'S sole option. If said streets  
2354 are added to the program, it shall not alter any provisions of the Agreement and the additional  
2355 curb miles shall be paid for at the current unit cost. In addition, the CITY may require some  
2356 streets to be temporarily or permanently removed from the list of scheduled streets swept  
2357 under the agreement.

2358 Conditions which may cause the CITY to order a street or an area to be  
2359 bypassed temporarily or permanently include the following:

- 2360 ■ Construction or development on or along street
- 2361 ■ Pavement maintenance activities
- 2362 ■ Inclement weather when running water is in the gutter or street making  
2363 sweeping ineffective
- 2364 ■ Special sweeping on alternative schedule
- 2365 ■ Consistent non-compliance of citizens to remove parked cars during sweep  
2366 days
- 2367 ■ Other legitimate reasons as determined by the CITY that make sweeping  
2368 impractical

2369 In the event that the CITY notifies the CONTRACTOR not to sweep for  
2370 such reasons, the CONTRACTOR shall not be paid for the equivalent Curb Miles and no  
2371 penalties will be assessed. Notification of cancellation will occur at least one day prior to the  
2372 scheduled sweep except for the condition of inclement weather.

2373 Because of varying rain conditions throughout the CITY, CONTRACTOR  
2374 may verbally request permission from the City Representative to postpone or cancel sweeping  
2375 during heavy and persistent rainstorms within the Service District. The CONTRACTOR shall not  
2376 be paid for the equivalent Curb Miles but no additional penalties will be assessed. To make up  
2377 missed Curb Miles, CONTRACTOR shall gain approval of the City Representative for a make-up  
2378 schedule. CONTRACTOR shall post informational signs at the entrance to all residential areas on  
2379 the make up route and sweep on the accepted day. If an acceptable schedule cannot be agreed  
2380 upon, no make-up sweep shall be performed.

2381 5.02 Modified Street Sweeping (MSS) Service. CONTRACTOR shall perform a  
2382 minimum of *((7) modified sweeps per month in Service District A; three (3) modified sweeps*  
2383 *per month in Service District B; and four (4) modified sweeps per month in Service District C)* in  
2384 those areas identified by CITY as requiring such service. Prior to performing the modified  
2385 sweep, CONTRACTOR shall post temporary "No Parking" signs to be enforced during the  
2386 regular sweep day. The CONTRACTOR shall also arrange for enforcement with the

2387 appropriate CITY agency, and prepare to have the area swept when the parking impact has  
2388 been minimized.

2389           5.03 Change in Level of Service. The CITY shall have the right to increase or decrease  
2390 the sweeping cycle until July 1, 2003. Until that date the CITY may elect to have the  
2391 CONTRACTOR perform Residential Street Sweeping Services monthly, twice per month or weekly.  
2392 If Residential Street Sweeping Services are increased or decreased from the original sweep cycle  
2393 selected by the CITY to more than once per month, the CITY will notify the CONTRACTOR of the  
2394 new frequency at least six (6) months prior to the time the service change is to occur.  
2395 Compensation will be based on the appropriate Curb Mile rates as set forth in Exhibit 1, which is  
2396 attached to and incorporated in this Agreement and as may be adjusted in accordance with Article  
2397 6 of this Agreement.

2398           5.04 Hazardous Waste. Under the terms of this Agreement, CONTRACTOR shall not  
2399 be required to remove from the street surface any Hazardous Waste. If in the course of performing  
2400 Residential Street Sweeping Services, any suspected Hazardous Wastes are encountered, the  
2401 location shall be reported to the San Jose Fire Department or any responsible agency and the City  
2402 Representative. Any Curb Mile not swept due to such circumstances shall not be subject to the  
2403 reduction in payment due to non-performance as set forth in this Agreement. In the event  
2404 Hazardous Waste is found the CONTRACTOR shall utilize the Customer Service System to provide  
2405 follow-up information to the City Representative.

2406           5.05 Disposal of Sweep Waste. Except as set forth below, all Sweep Waste  
2407 Collected as a result of performing Residential Street Sweeping Services shall be transported  
2408 to, and disposed of at, the Disposal Facility at no cost to the CONTRACTOR. In the event the  
2409 Disposal Facility is closed on a Work Day, the CONTRACTOR shall transport and dispose of  
2410 the Residential Solid Waste at such other legally permitted Disposal Facility as designated in  
2411 writing by CITY.

2412           5.06 Coordination with Other City Programs. CONTRACTOR shall establish and  
2413 maintain good working relationships with various work units in the CITY. The CONTRACTOR  
2414 shall be responsible for cooperating and coordinating with the following CITY programs:

2415           5.06.1 ACB Sweeping Program. ACB stands for Arterial, Commercial and Bike  
2416 routes. The CITY sweeps these type of streets on either a weekly or bi-weekly frequency. Streets  
2417 under this program are not included as part of the work to be performed under this Agreement.

2418           5.06.2 Transit Mall And Central Business District (CBD) Street Sweeping Program.  
2419 Streets under this program are not included as part of the work to be performed under this  
2420 Agreement.

2421           5.06.3 Chip Seal Program. This program is an annual residential street surface  
2422 sealing performed by the Streets and Traffic Department. It usually commences on the first Monday  
2423 after the Fourth of July and usually ends around mid-September. The CITY reserves the right to  
2424 suspend normal sweeping activities on affected streets. The CONTRACTOR will be informed each



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2461 6.04 above shall be increased or decreased by the percentage change in the Refuse Rate  
2462 Index (RRI) from the base month, which shall be December of the prior preceding year, to  
2463 December of the preceding year as contained in the most recent publication of the source  
2464 documents listed in Exhibit 3. Therefore, the first rate adjustment will be based on the  
2465 percentage change between the December 2001 indices and the December 2002 indices.

2466 6.04.2 On or before April 15, 2003 and annually thereafter during the term this  
2467 Agreement, CONTRACTOR shall deliver to the CITY in the format as set forth in Exhibit 3  
2468 which is attached to and incorporated in this Agreement, and as may be further revised by the  
2469 CITY, financial information for the specific services performed under this Agreement fore the  
2470 preceding calendar year. If the CONTRACTOR fails to submit the financial information in the  
2471 required format prior to April 15th, it is agreed that the CONTRACTOR waives the right to the  
2472 RRI rate adjustment for that year. Failure to provide the financial information does not  
2473 preclude the CITY from applying the RRI using the prior years financial data, or pro forma data  
2474 if no prior year financial data is available, if that application would result in a decrease in the  
2475 affected service rates.

2476 6.04.3 Annual adjustments shall be made only in units of one cent (\$0.01).  
2477 Fractions less than one cent (\$0.01) shall not be considered in making adjustments. The  
2478 indices shall be truncated at four (4) decimal places for the adjustment calculations.

2479 6.04.4 If the failure to submit the information is the result of extraordinary or  
2480 unusual circumstances as demonstrated by the CONTRACTOR, the CITY may consider the  
2481 request for the annual RRI rate adjustment.

2482 6.04.5 As of June 1, 2003 and annually thereafter during the term of this  
2483 Agreement, the CITY shall notice the CONTRACTOR of the RRI adjustment to the affected  
2484 service rates set forth in Exhibit 1.

## 2485 **ARTICLE 8. COLLECTION ROUTES**

2486 (This ~~ArticleSection~~ will be adjusted based on the type of services awarded.)

2487 8.01 (to be inserted) Service Routes. On or before October 1, 2001, CITY shall  
2488 provide CONTRACTOR with base maps in an electronic format. During the term of the  
2489 Agreement the CITY shall continue to provide updated base maps to the CONTRACTOR.  
2490 Ninety (90) days prior to commencement of (to be inserted) Services, the CONTRACTOR shall  
2491 provide the CITY with maps precisely defining Collection routes, together with the days and the  
2492 times at which Collection shall regularly commence. The maps shall be printed and in an  
2493 electronic format that is compatible with the CITY'S system. For purposes of this Section  
2494 compatible means the ability to import and export data between computer systems without the  
2495 need for custom translation software.

2496 The City Representative may provide written comments on the  
2497 preliminary maps to CONTRACTOR no later than ten (10) days thereafter. CONTRACTOR

2498 shall revise the maps to reflect such comments and return them to the CITY within ten (10)  
2499 days after receipt of CITY comment for CITY corroboration.

2500           8.02 Residential Street Sweeping Service Routes. On or about February 1, 2002,  
2501 CITY shall provide the CONTRACTOR with a Residential Street Sweeping database for use in  
2502 developing routes and maps. CONTRACTOR shall develop the routes and maps using this  
2503 data. No later than April 1, 2002 CONTRACTOR shall provide the CITY with Service District  
2504 maps, precisely defining the Sweeper Routes for review and approval by the CITY. The route  
2505 maps shall include the day of the month swept, the sweeping schedules in adjacent areas, and  
2506 portions to be swept in the morning and in the afternoon. Scheduling and sequencing  
2507 information shall be included for each route. The City Representative may provide written  
2508 comments on the preliminary maps to CONTRACTOR no later than ten (10) days thereafter.  
2509 CONTRACTOR shall revise the maps to reflect such comments and return them to the CITY  
2510 within ten (10) days after receipt of CITY comment for CITY corroboration. Upon approval by  
2511 the CITY of the final Sweeper Route maps, the CONTRACTOR shall develop and maintain the  
2512 Sweeping Routes on a computerized mapping system compatible with the CITY'S mapping  
2513 system. The CONTRACTOR shall have its own personal computer system with the latest  
2514 version of the specified software, *(to be inserted)*, to create and maintain the route maps.

2515                               Changes due to addition and deletion of certain streets shall be provided  
2516 by the CITY and shall be updated into the CONTRACTOR system every month and shall also  
2517 be reflected in the CONTRACTOR'S printed route maps.

2518           8.03 (to be inserted) Service Route Changes. The CONTRACTOR shall submit to  
2519 the CITY, in writing, any proposed route change (including maps thereof) not less than sixty  
2520 (60) calendar days prior to the proposed date of implementation. The CITY may provide written  
2521 comments on such proposed change to the CONTRACTOR no later than ten (10) days  
2522 thereafter, and in such event, the CONTRACTOR shall revise the routes to reflect such  
2523 comments and return them to the CITY within ten (10) days, for CITY corroboration. The  
2524 CONTRACTOR shall not implement any route changes without the prior review of the City  
2525 Representative. If the change will change the Collection day for a Service Recipient, the  
2526 CONTRACTOR shall notify those Service Recipients of route changes not less than thirty (30)  
2527 days before the proposed date of implementation.

2528           8.04 Collection Route Audits.

2529                               8.04.1 Route Audits. All Collection routes are to be audited annually in a  
2530 manner subject to the approval of the CITY. CONTRACTOR shall conduct an annual route  
2531 audit for each of CONTRACTOR'S Residential Solid Waste Collection routes, each of  
2532 CONTRACTOR'S Recyclable Materials Collection routes, each of CONTRACTOR'S Used Oil  
2533 Collection routes and each of the CONTRACTOR'S Yard Trimming Collection routes, *(to be*  
2534 *adjusted based on services awarded)*. The route audits shall be conducted once each year  
2535 during the term of this Agreement beginning in the year 2003 with each route being audited in

2536 a different quarter each year so that all routes are audited in each of the four (4) quarters  
2537 during the initial term of this Agreement. CONTRACTOR shall conduct audits of all routes  
2538 served by one Collection vehicle on five (5) consecutive Work Days. CITY reserves the right to  
2539 determine which routes will be audited in a particular week and, if CITY exercises this right,  
2540 shall notify CONTRACTOR of the routes not less than seventy-two (72) hours in advance.

2541 The route audits shall include the following information for each  
2542 Collection route:

2543 ■ The route number, the date of the audit, and the starting and ending times of  
2544 collection during the audit.

2545 ■ A description of the route location, including the names of the streets covered.

2546 ■ The number of Service Units on the route.

2547 ■ The number of Service Units participating on the date of the audit and the  
2548 number and type (Residential Solid Waste, Recyclable Materials, Used Oil, Yard Trimming) of  
2549 Collections.

2550 ■ For the Residential Solid Waste Collection routes, the number of Service Units  
2551 that set out Tagged Garbage Bags and the total number of Tagged Garbage Bags Collected.

2552 ■ For the Recyclable Materials Collection routes, the number of Recyclable Carts  
2553 and/or Recycling Bins distributed.

2554 ■ For the Recyclable Materials Collection routes, the number of contaminated  
2555 Recyclable Carts and/or Recycling Bins.

2556 ■ For Used Oil collection routes, the number of Used Oil Containers and Used Oil  
2557 Filter Containers Collected and the number of Used Oil Containers and Used Oil Filter  
2558 Containers Collected on the date of the audit.

2559 ■ The number of Collection vehicles used on the route by vehicle type (e.g., rear  
2560 loader Solid Waste truck, compartmentalized Recyclable Materials truck), the tare weight of  
2561 each vehicle, the weight of each vehicle each trip, the capacity of each vehicle by weight and  
2562 volume, and the number of trips made by each vehicle to the Disposal Facility or the MRF.

2563 ■ The tonnage of Residential Solid Waste and Recyclable Materials, the volume  
2564 of Used Oil, and the number of Used Oil Filters disposed of per vehicle trip and the time of  
2565 arrival and departure of each vehicle at the disposal or processing facility.

2566 ■ For route audits performed after December 31, 2003, a description of any  
2567 changes in the route occurring since the immediately preceding route audit, including changes  
2568 in the location of the route, the number of Service Recipients, equipment used, and collection  
2569 methods employed.

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2570           ■       Garbage, Recyclables and Yard Trimmings Cart serial number and size for each  
2571 Service Unit on the route.

2572           ■       The name(s), telephone number(s), and signature(s) of the persons performing  
2573 each route audit.

2574           8.05 Special Route Audits. CITY may request performance of route audits in addition  
2575 to the route audits conducted pursuant to Section 8.04.1. Within fifteen (15) calendar days of  
2576 a written request for a special route audit, CONTRACTOR shall provide to the City  
2577 Representative a written cost proposal for performance of the special route audit. If the City  
2578 Representative accepts CONTRACTOR'S cost proposal, CONTRACTOR shall conduct the  
2579 special route audit and City shall compensate CONTRACTOR at the rate described in the cost  
2580 proposal.

2581           8.06 (to be inserted) Collection Route Audits. The CITY reserves the right to conduct  
2582 audits of CONTRACTOR'S (to be inserted) Collection route audits. The CONTRACTOR shall  
2583 cooperate with the CITY in connection therewith, including permitting CITY employees or  
2584 agents, designated by the City Representative, to ride in the Collection Vehicles during the  
2585 conduct of audits. The CONTRACTOR shall have no responsibility or liability for the salary,  
2586 wages, benefits or worker compensation claims of any person designated by the City  
2587 Representative to conduct such audits.

2588           **ARTICLE 9. MINIMUM PERFORMANCE AND DIVERSION STANDARDS**

2589           9.01 In order to receive the Agreement term extension offers set forth in Article 2 of  
2590 this Agreement, the CONTRACTOR must achieve the following annual minimum performance  
2591 and diversion standards in each calendar year beginning January 1, 2003.

2592           9.01.1 Performance Standards.

2593                       Assessment of administrative charges, as set forth in Article 19 of this  
2594 Agreement of less than:

2595                       ■ \$100,000 per Service District in any one calendar year beginning  
2596                       January 1, 2003 for SFD Collection Services.

2597                       ■ \$50,000 per Service District in any one calendar year beginning  
2598                       January 1, 2003 for MFD Collection Services.

2599                       ■ \$50,000 per Service District in any one calendar year beginning  
2600                       January 1, 2003 for Yard Trimming Collection and Residential Street  
2601                       Sweeping Services.

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2602                    9.01.2 Minimum Diversion Standards

2603                    9.01.2.1 SFD Solid Waste Collection Service. Thirty five percent (35%)  
2604 for Residential Solid Waste, fifty percent (50%) for Large Items, and fifty percent (50%) for  
2605 items Collected from performing SFD Neighborhood Clean-Up Services.

2606                    9.01.2.2 MFD Solid Waste Collection Service. Twenty five percent  
2607 (25%) the first calendar year, thirty percent (30%) the second calendar year, and thirty five  
2608 percent (35%) each calendar year thereafter for Residential Solid Waste, and fifty percent  
2609 (50%) for Large Items.

2610                    9.01.2.3 Yard Trimmings Collection Services. Ninety Five percent (95%)  
2611 per calendar year.

2612                    **ARTICLE 10. COLLECTION EQUIPMENT**

2613                    10.01 Equipment Specifications.

2614                    10.01.1 General Provisions. All *(to be inserted)* equipment used by  
2615 CONTRACTOR in the performance of services under this Agreement shall be the highest  
2616 quality available. The vehicles shall be designed and operated so as to prevent Collected  
2617 materials Residential Solid Waste, Recyclable Materials, Sweep Waste, Large Items and Yard  
2618 Trimmings from escaping from the vehicles. Hoppers shall be closed on top and on all sides  
2619 with screening material to prevent Collected materials Residential Solid Waste, Recyclable  
2620 Materials, Sweep Waste, Large Items and Yard Trimmings from leaking, blowing or falling from  
2621 the vehicles. All trucks and containers shall be watertight and shall be operated so that liquids  
2622 do not spill during Collection or in transit.

2623                    All SFD and MFD Collection Service vehicles utilized by CONTRACTOR  
2624 pursuant to this Agreement shall provide fully-automated SFD and MFD Collection Service  
2625 except where such service is not feasible because of topographic or other physical factors.  
2626 The determination that fully-automated SFD and MFD Collection Service is not feasible shall  
2627 be made by the City Representative after consultation with CONTRACTOR. Where fully-  
2628 automated SFD and MFD Collection Service is not feasible, CONTRACTOR shall consult with  
2629 the City Representative regarding the SFD and MFD Collection Service equipment to be  
2630 utilized.

2631                    ~~9.01.2~~10.01.2 Alternate Fuel Vehicles. **(This Section will be completed**  
2632 **based on the proposal of the selected CONTRACTOR)**

2633                    10.01.3 Lubricants. Except as approved in writing by the Director of  
2634 Environmental Services on an individual vehicle basis, CONTRACTOR shall utilize re-refined  
2635 motor oil and re-refined hydraulic oil in all vehicles used in CONTRACTORS performance of  
2636 this Agreement.

2637                    10.01.4    Large Items. Vehicles used for Collection of Large Items shall not use  
2638 compactor mechanisms or mechanical handling equipment that may damage reusable goods  
2639 or release Freons or other gases from pressurized appliances, prior to sorting by a CITY-  
2640 approved process.

2641                    10.01.5    Collection Vehicles. CONTRACTOR shall not use any Collection  
2642 vehicle that is more than nine (9) years old. CONTRACTOR shall not use any Collection  
2643 vehicle that is more than five (5) years old or has more than 250,000 miles unless such vehicle  
2644 is a Rebuilt Vehicle.

2645                    10.01.6    Street Sweeping Equipment. CONTRACTOR shall maintain, at all  
2646 times, sufficient street sweepers such that no sweeper is ever assigned to more that one (1)  
2647 sweep route on any Work Day. CONTRACTOR shall not use any Street Sweeping equipment  
2648 that is more than five (5) years old as of July 1, 2002 based on the date of manufacture unless  
2649 the sweeper motor of such equipment has been rebuilt within the five year period preceding  
2650 July 1, 2002.

2651                    10.01.7    Registration. All vehicles used by CONTRACTOR in providing  
2652 Collection Services under this Agreement, except those vehicles used solely on  
2653 CONTRACTORS premises, are to be registered with the California Department of Motor  
2654 Vehicles.

2655                    10.01.8    Safety Markings. All Collection and Street Sweeping equipment used  
2656 by COLLECTOR shall have appropriate safety markings including, but not limited to, highway  
2657 lighting, flashing and warning lights, clearance lights, and warning flags. All such safety  
2658 markings shall be subject to the approval of the CITY and shall be in accordance with the  
2659 requirements of the California Vehicle Code, as may be amended from time to time.

2660                    10.01.9    Vehicle Signage and Painting. Collection and Street Sweeping  
2661 vehicles shall be painted and numbered consecutively without repetition and shall have the  
2662 CONTRACTOR'S name, CITY'S customer service telephone number, (408) 277-2700, and the  
2663 number of the vehicle painted in letters of contrasting color, at least four (4) inches high, on  
2664 each side and the rear of each vehicle. The CITY may specify the format of the alpha-numeric  
2665 numbering sequence to be used, so that all vehicles in use by all CONTRACTORS have a  
2666 unique identifier. No advertising shall be permitted other than the name of the CONTRACTOR  
2667 except promotional advertisement of the Recyclable Materials and Yard Trimmings programs.  
2668 Collection and Street Sweeping vehicles shall be painted white and vehicle striping and logos  
2669 shall be painted CONTRACTOR'S primary corporate color. CONTRACTOR shall repaint all (*to*  
2670 *be inserted*) vehicles (including vehicles striping) during the term of this Agreement on a  
2671 frequency as necessary to maintain a positive public image as reasonably determined by the  
2672 City Representative, but not less often than every thirty (30) months beginning July 1, 2002.

2673                    10.01.10   Bin Signage, Painting, and Cleaning. All metal bins of any service  
2674 type furnished by the CONTRACTOR shall be either painted or galvanized. All metal or plastic

2675 bins shall display the CONTRACTOR'S name, CITY'S customer service telephone number,  
2676 ((408) 277-2700), and the number of the bin and shall be kept in a clean and sanitary  
2677 condition. All such bins shall be approved by the City. Such bins as are provided by the  
2678 CONTRACTOR shall be steam cleaned by the CONTRACTOR as frequently as necessary so  
2679 as to maintain them in a sanitary condition. At a minimum, CONTRACTOR shall steam clean  
2680 the bins once per year at CONTRACTOR'S expense. Bins will be subject to periodic,  
2681 unscheduled inspections by the CITY and determination as to sanitary condition shall be made  
2682 by the CITY.

2683       10.02 Recycle Plus. Collection vehicles shall be defined as City of San Jose Recycle  
2684 Plus Collection vehicles through the use of interchangeable signs. These signs will contain  
2685 Recycle Plus related announcements in English, Spanish, Vietnamese, or other languages as  
2686 directed by CITY. CONTRACTOR shall be responsible for equipping both sides of its vehicles  
2687 with frames capable of securing signs of dimensions 29-3/16" high by 93-3/16" wide or other  
2688 dimensions designated by the City Representative. CITY shall provide such signs to  
2689 CONTRACTOR with the minimum of one (1) weeks notice prior to design changes.  
2690 CONTRACTOR shall install the signs in the frames. Sign changes shall not occur more  
2691 frequently than once every quarter.

2692       10.03 Collection Vehicle Noise Level. The noise level generated by Collection  
2693 vehicles using compaction mechanisms during the compaction process shall not exceed  
2694 seventy-five (75) decibels at a distance of twenty-five (25) feet from the Collection vehicle  
2695 measured at an elevation of five (5) feet above ground level using the "A" scale of the standard  
2696 sound level meter at slow response. CONTRACTOR shall cause the Collection vehicles to be  
2697 tested annually during the months of March and April, beginning March of 2003, and shall  
2698 submit a certificate of testing showing that the vehicles met the requirements of this Article.

2699       10.04 Vehicle Certification. For each Collection vehicle used in the performance of  
2700 services under this Agreement, CONTRACTOR shall obtain a certificate of compliance (smog  
2701 check) issued pursuant to Part 5 of Division 26 of the California Health and Safety Code  
2702 (Section 43000 et seq.) and regulations promulgated thereunder and/or a safety compliance  
2703 report issued pursuant to Division 14.8 of the California Vehicle Code (Section 34500 et seq.)  
2704 and the regulations promulgated thereunder, as applicable to the vehicle. CONTRACTOR  
2705 shall maintain copies of such certificates and reports and shall make such certificates and  
2706 reports available for inspection upon request by the City Representative.

2707       No later than June 15, 2002 CONTRACTOR shall submit to the City  
2708 Representative verification that each of the CONTRACTOR'S (*to be inserted*) Collection  
2709 vehicles has passed the California Heavy Duty Vehicle Inspection. Thereafter, CONTRACTOR  
2710 shall cause each vehicle in CONTRACTOR'S (*to be inserted*) Collection fleet to be tested  
2711 annually in the California Heavy Duty Inspection Program and shall submit written verification  
2712 to CITY within ten (10) Work Days of the completion of such test. CONTRACTOR shall not  
2713 use any vehicle that does not pass such inspection.

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2714 9.0510.05 Equipment Maintenance. CONTRACTOR shall maintain *(to be inserted)*  
2715 Collection and Street Sweeping equipment in a clean condition and in good repair at all times.  
2716 All parts and systems of the *(to be inserted)* Collection equipment shall operate properly and  
2717 be maintained in a condition satisfactory to CITY. CONTRACTOR shall wash all *(to be*  
2718 *inserted)* Collection and Street Sweeping vehicles at least once a week using recycled water.  
2719 All washings shall be conducted in a manner that conforms to the BMP Guidelines for Non-  
2720 Point Source Pollutants.

2721 10.06 Maintenance Log. CONTRACTOR shall maintain a maintenance log for all  
2722 Collection and Street Sweeping vehicles. The log shall at all times be accessible to CITY via  
2723 computer, or by physical inspection upon request of City Representative, and shall show, at a  
2724 minimum, each vehicles CONTRACTOR assigned identification number, date purchased or  
2725 initial lease, dates of performance of routine maintenance, dates of performance of any  
2726 additional maintenance, and description of additional maintenance performed.

2727 10.07 Equipment Inventory. On or before June 15, 2002, CONTRACTOR shall  
2728 provide to CITY an inventory of Collection and Street Sweeping vehicles and major equipment  
2729 used by CONTRACTOR for Collection or transportation and performance of services under this  
2730 Agreement. The inventory shall indicate each Collection vehicle by CONTRACTOR assigned  
2731 identification number, DMV license number, the age of the chassis and body, type of fuel used,  
2732 the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition,  
2733 the decibel rating and the maintenance and rebuild status. CONTRACTOR shall utilize the  
2734 Customer Service System to submit an updated inventory annually to the CITY or more often  
2735 at the request of the City Representative. Each inventory shall also include the tare weight of  
2736 each vehicle as determined by weighing at a public scale and not at a disposal or other facility  
2737 scale used by CONTRACTOR. The specific procedure for performing the tare weighing shall  
2738 be subject to the approval of the CITY. Each vehicle inventory shall be accompanied by a  
2739 certification signed by CONTRACTOR that all Collection vehicles meet the requirements of this  
2740 Agreement.

2741 10.08 Reserve Equipment. The CONTRACTOR shall have available to it, at all times,  
2742 reserve Collection and Residential Street Sweeping equipment which can be put into service  
2743 and operation within one (1) hour of any breakdown. Such reserve equipment shall  
2744 correspond in size and capacity to the equipment used by the CONTRACTOR to perform the  
2745 contractual duties.

## 2746 **ARTICLE 11. CONTRACTOR DISPOSAL ALLOCATION**

2747 11.01 CITY'S Responsibility. CITY shall arrange for and pay for sufficient landfill  
2748 disposal capacity for the disposal of all Residential Solid Waste Collected by CONTRACTOR  
2749 from *(to be inserted)* Service Units in CONTRACTOR'S Service District, wastes Collected by  
2750 CONTRACTOR in performing emergency services pursuant to Article 15 of this Agreement,  
2751 and CITY approved ~~Large Item residue~~Neighborhood Cleanup disposal and Sweep Waste

2752 from Collection Services performed pursuant to this Agreement. CITY shall pay the disposal  
2753 facilities directly for the disposal of the above-described materials unless otherwise mutually  
2754 agreed by CITY and CONTRACTOR.

2755           11.02 CONTRACTOR'S Responsibility.

2756                   11.02.1 Delivery of Materials. CONTRACTOR shall transport all *(to be*  
2757 *inserted)* Collected by CONTRACTOR from *(to be inserted)* Service Units in CONTRACTOR'S  
2758 Service District pursuant to this Agreement, and shall deliver all such materials to Newby  
2759 Island Landfill, located at 1601 Dixon Landing Road, San Jose, or to such other disposal  
2760 facilities located in Santa Clara County as CITY may designate in writing.

2761                   11.02.2 Limitation on Use of CITY Arranged Landfill Capacity. CONTRACTOR  
2762 shall not, under any circumstances whatsoever, utilize the CITY-arranged disposal capacity for  
2763 the disposal of any material that was Collected by CONTRACTOR or by any other person,  
2764 other than the materials specifically listed in this Article of this Agreement without the express  
2765 prior written authorization of the City Representative.

2766                   11.02.3 Compliance With Regulations. CONTRACTOR shall observe and  
2767 comply with all regulations in effect at Newby Island Landfill or any other CITY-designated  
2768 disposal facility at the time CONTRACTOR transports and disposes of materials at the site.  
2769 CONTRACTOR shall at all times while at Newby Island Landfill or any other CITY-designated  
2770 disposal facility, operate according to safe industry practices.

2771                   11.02.4 CONTRACTOR'S Acknowledgement. CONTRACTOR acknowledges  
2772 that CITY will not arrange for or pay for the disposal of residue from Recyclable Materials, Yard  
2773 Trimmings, Large Items or Used Oil processing. The disposal of all such materials is the sole  
2774 responsibility of CONTRACTOR. Residue from a San Jose Materials Recovery Facility that  
2775 results from the processing of Recyclable Materials Collected from SFD or MFD Service Units  
2776 pursuant to this Agreement is not "commercial solid waste" but instead is considered by the  
2777 CITY to be generated at Service Unit wherein the Recyclable Materials are Collected.

2778                   11.03 Disposal of Sweep Waste. Except as set forth below, all Sweep Waste  
2779 Collected as a result of performing Residential Street Sweeping Services shall be transported  
2780 to, and disposed of at, the Disposal Facility. In the event the Disposal Facility is closed on a  
2781 Work Day, the CONTRACTOR shall transport and dispose of the Sweep Waste at such other  
2782 legally permitted disposal facility as designated in writing by CITY. Failure to comply with this  
2783 provision shall result in the levy of administrative charges as specified in Article 19 of this  
2784 Agreement and may result in the CONTRACTOR being in default under this Agreement.  
2785 CONTRACTOR shall ensure that none of the Sweep Waste is mixed or commingled with any  
2786 materials from any source other than that of the CITY'S Residential Street Sweeping Service  
2787 program.

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2788 **ARTICLE 12. RECYCLABLE MATERIALS AND YARD TRIMMINGS PROCESSING**

2789 12.01 Recyclable Materials Processing Facility. CONTRACTOR shall provide a  
2790 Recyclable Materials processing facility, or capacity, for processing all Recyclable Materials  
2791 Collected pursuant to this Agreement. CONTRACTOR shall ensure that representatives of  
2792 CITY have access to the Recyclable Materials processing facility during normal business  
2793 hours.

2794 12.01.1 Processing of Recyclable Materials. CONTRACTOR shall ensure  
2795 there is sufficient capacity at the processing facility to process, and store until marketed, all  
2796 Recyclable Materials Collected by CONTRACTOR pursuant to this Agreement during any one  
2797 week Collection period. CONTRACTOR shall maintain procedures, records and internal  
2798 controls to preclude the commingling of Recyclable Materials Collected pursuant to this  
2799 Agreement with any and all other materials delivered to the processing facility and to ensure  
2800 complete, accurate and timely recording and reporting of Recyclable Materials processing. At  
2801 a minimum, CONTRACTOR shall perform or shall caused to be performed, all the following:

2802 ■ All Recyclable Materials shall be weighed upon delivery to the processing facility  
2803 and all weight (gross and tare) and related delivery information, including date, time, material  
2804 type, route and truck number, shall be recorded.

2805 ■ All processed Recyclable Materials shall be weighed after baling, containerizing  
2806 or other processing and the weights shall be recorded.

2807 ■ The weights of all materials received, the weights of all materials processed, the  
2808 weights of all materials sold, the weights all materials stored, and weights of all materials  
2809 disposed as residue shall be reconciled on weekly basis.

2810 ■ Each bale shall be tagged with a bale tag that contains at a minimum: a non-  
2811 repeating identification number, bale weight, and material type.~~All balers shall be equipped~~  
2812 ~~with tamper-proof counters to record the number and weight of bales processed.~~

2813 ■ All scales shall be registered with the County Department of Weights and  
2814 Measures and shall be regularly maintained to ensure their reliability and continued  
2815 functioning. Current certificates of registration, inspection reports and all maintenance records  
2816 shall be made available for review by CITY upon receipt of written request from the City  
2817 Representative. Scales shall be operated in the same manner as required by State weigh  
2818 master regulations.

2819 12.01.2 Disposal of Residue. CONTRACTOR shall properly dispose of  
2820 any and all residue remaining from the processing of Recyclable Materials. Such disposal  
2821 shall be at CONTRACTOR'S sole cost and expense. The residue shall not be included in the  
2822 disposal capacity provided by CITY pursuant to Article 11 of this Agreement.

2823 12.01.3 Alternate Processing Capacity. CONTRACTOR shall secure  
2824 processing capacity at an alternative facility, approved by the City Representative, for use in

2825 the event CONTRACTOR is unable to process Recyclable Materials at the primary Recyclable  
2826 Materials Facility.

2827                   12.01.4       Transformation of Recyclable Materials.       CONTRACTOR  
2828 acknowledges that the California Integrated Waste Management Act requires solid waste  
2829 diversion from landfill disposal and that transformation, as defined in Public Resources Code  
2830 Section 40201, is not an acceptable method for meeting said diversion requirements.  
2831 CONTRACTOR shall not process by means of transformation any Recyclable Materials  
2832 Collected under this Agreement, nor shall CONTRACTOR ship, transport, deliver or otherwise  
2833 make available any such Recyclable Materials to any person for the purpose of transformation,  
2834 without the express prior written authorization of the CITY'S Director of Environmental Services  
2835 Department. This restriction shall remain in force regardless of any change in the definition of  
2836 transformation or in the ability of the CITY to count transformation as diversion under State law.

2837                   12.02 Yard Trimmings Processing Facility. CONTRACTOR shall provide a Yard  
2838 Trimmings Processing Facility, or capacity, for processing all Yard Trimmings Collected  
2839 pursuant to this Agreement. CONTRACTOR shall ensure that representatives of CITY have  
2840 access to the Yard Trimmings Processing Facility during normal business hours.

2841                   12.02.1       Processing of Yard Trimmings.       CONTRACTOR shall ensure  
2842 there is sufficient capacity at the processing facility or subcontracted processor for receiving,  
2843 processing, and curing all Yard Trimmings Collected by CONTRACTOR pursuant to this  
2844 Agreement. CONTRACTOR shall maintain procedures, records and internal controls to record  
2845 weights of incoming material before San Jose Yard Trimmings are commingled with Yard  
2846 Trimmings from outside the City of San Jose. At a minimum, CONTRACTOR shall perform or  
2847 shall caused to be performed, all the following:

2848                   12.02.2 All Yard Trimmings shall be weighed upon delivery to the processing  
2849 facility and all weight (gross and tare) and related delivery information, including date, time,  
2850 material type, route and truck number, shall be recorded.

2851                   12.02.3 All processed Yard Trimmings shall be weighed after baling,  
2852 containerizing or other processing and the weights shall be recorded.

2853                   12.02.4 The weights of all materials received, the weights of all materials  
2854 processed, the weights of all materials sold, the weights all materials stored, and weights of all  
2855 materials disposed as residue shall be reconciled on monthly basis.

2856                   12.02.5 All scales shall be registered with the County Department of Weights  
2857 and Measures and shall be regularly maintained to ensure their reliability and continued  
2858 functioning. Current certificates of registration, inspection reports and all maintenance records  
2859 shall be made available for review by CITY upon receipt of written request from the City  
2860 Representative. Scales shall be operated in the same manner as required by State weigh  
2861 master regulations.

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2862 12.02.6 Maintain capacity to ~~process~~ incoming material in accordance  
2863 with the requirements of Exhibit 21, to this Agreement, and to store finished products until sold.

2864 12.03 Disposal of Residue. CONTRACTOR shall properly dispose of any and all  
2865 residue remaining from the processing of Yard Trimmings. Such disposal shall be at  
2866 CONTRACTOR'S sole cost and expense. The residue shall not be included in the disposal  
2867 capacity provided by CITY pursuant to Article 11 of this Agreement.

2868 12.04 Alternate Processing Capacity. CONTRACTOR shall secure processing  
2869 capacity at an alternative facility, approved by the City Representative, for use in the event  
2870 CONTRACTOR is unable to process Yard Trimmings at the primary Yard Trimmings  
2871 Processing Facility.

### 2872 **ARTICLE 13. CONTRACTOR'S OFFICE**

2873 13.01 CONTRACTOR'S Office. The CONTRACTOR shall maintain an office within the  
2874 municipal limits of the CITY where complaints can be received. Such office shall be equipped  
2875 with sufficient telephones that all Collection Service related calls received during normal  
2876 business hours are answered by an employee within five (5) rings, and shall have responsible  
2877 persons in charge during Collection hours and shall be open during such normal business  
2878 hours, 8:00 a.m. to 6:00 p.m. on all Work Days and on those Saturdays when Collections  
2879 Services are required as a result of the holiday Collection policy set forth in Section 3.06 of this  
2880 Agreement. The CONTRACTOR shall provide either a telephone answering service or  
2881 mechanical device to receive Service Recipient inquiries during those times when the office is  
2882 closed. Calls received after normal business hours shall be addressed the next Work Day  
2883 morning.

2884 13.02 Emergency Contact. The CONTRACTOR shall provide the City Representative  
2885 with an emergency phone number where the CONTRACTOR can be reached outside of the  
2886 required office hours.

2887 13.03 Multilingual/TDD Service. CONTRACTOR shall at all times maintain the  
2888 capability of responding to telephone calls in English, Spanish or Vietnamese and such other  
2889 languages as CITY may direct. CONTRACTOR shall at all times maintain the capability or  
2890 responding to telephone calls through Telecommunications Device for the Deaf (TDD)  
2891 Services.

2892 13.04 Service Recipient Calls. During office hours, CONTRACTOR shall maintain a  
2893 telephone answering system capable of accepting at least fifteen (15) incoming calls at one  
2894 time. CONTRACTOR shall record all calls including any inquiries, service requests and  
2895 complaints into the CSS (specific fields to be developed).

2896 Any such call received via CONTRACTOR'S answering service shall be  
2897 recorded in the CSS no later than the following Work Day.

2898 All incoming calls will be answered within 5 rings. Any call "on-hold" in excess  
2899 of 1.5 minutes shall have the option to remain "on-hold" or to be switched to a message center  
2900 where Service Recipient can leave a message. CONTRACTOR'S customer service  
2901 representative shall return Service Recipient calls. For all messages left before 3:00 p.m., all  
2902 "call backs" shall be attempted a minimum of one time prior to 6:00 p.m. on the day of the call.  
2903 For messages left after 3:00 p.m., all "call backs" shall be attempted a minimum of one time  
2904 prior to noon the next Work Day. CONTRACTOR shall make minimum of three (3) attempts  
2905 within twenty-four hours of the receipt of the call. If CONTRACTOR is unable to reach the  
2906 Service Recipient on the next Work Day, the CONTRACTOR shall send a postcard to the  
2907 Service Recipient on the second Work Day after the call was received, indicating that the  
2908 CONTRACTOR has attempted to return the call. All attempts to contact the caller shall be  
2909 recorded in the Customer Service System.

2910 13.05 Customer Service Representative Training

2911 All CONTRACTOR'S customer service representatives shall be required to  
2912 attend annual training to be provided by CITY.

2913 **ARTICLE 14.—OTHER SERVICES**

2914 14.01 Public Outreach and Education Services. CONTRACTOR, at their own  
2915 expense, shall prepare, submit and implement an annual (calendar year) Public Education and  
2916 Outreach Program beyond the City's Public Education and Outreach Program. The proposed  
2917 action plan must be submitted annually for CITY approval no later than September 30 for the  
2918 next calendar year. The program must include a minimum of four campaigns per calendar  
2919 year, designed to increase diversion and resident participation. Campaigns should target  
2920 certain Recyclable Materials or "problem" areas of the CONTRACTOR'S Service District where  
2921 improvements can be maximized. Targets of outreach should be based on local trends and  
2922 recycling patterns based on information obtained by both CITY and CONTRACTOR staff.  
2923 Required elements of the annual program are listed in Exhibit 18, which is attached to and  
2924 incorporated in this Agreement. *(This Article will be adjusted based on the actual services*  
2925 *awarded).*

2926 14.01.1 Annual Collection Service Notice. Each year during the term of this  
2927 Agreement, the CITY shall publish and the CONTRACTOR shall distribute a notice to all SFD  
2928 Service Units regarding the SFD Collection Service programs. The notice shall contain at a  
2929 minimum; definitions of the materials to be Collected, procedures for setting out the materials,  
2930 maps of the Service District indicating the days when SFD Solid Waste Collection Services,  
2931 SFD Large Items Collection Services, SFD Used Oil Collection Services, SFD Recycling  
2932 Services, and Yard Trimmings Collection Services will be provided, and the CITY customer  
2933 service phone number. The notice shall be provided in English, Spanish, Vietnamese, and  
2934 other languages as directed by the CITY and shall be distributed by the CONTRACTOR no

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2935 later than ~~June 1, 2002~~~~July 1, 2004~~ during the first year of the Agreement and no later than  
2936 June 1 of each year thereafter.

2937           14.01.2 Collection Program Magnet. Each year during the term of this  
2938 Agreement, the CONTRACTOR shall produce and distribute a magnet to the SFD Service  
2939 Units that describes the days of the month on which SFD Collection Services will be provided.  
2940 The design of the magnet will be approved by the CITY prior to production. The magnet shall  
2941 be distributed by the CONTRACTOR no later than June 1, 2002 during the first year of the  
2942 Agreement ~~Contract~~ and no later than June 1 of each year thereafter.

2943           14.01.3 Annual Street Sweeping Calendars. CONTRACTOR shall mail annual  
2944 Sweeping Calendars to each Service Unit adjacent to streets being swept under this program.  
2945 This mailing shall be provided in English, Spanish, Vietnamese, and other languages as  
2946 directed by the CITY and shall describe the program, inform each Service Recipient of their  
2947 sweep day(s) for the upcoming year, and provide the CITY customer service phone number.  
2948 The mailing shall occur no later than May 15, 2002 ~~and~~ for the initial year of the Agreement,  
2949 then by December 15, 2002 and annually thereafter during the term of this Agreement. The  
2950 calendars will be provided to the CONTRACTOR by the CITY. In addition, up to two (2) times  
2951 per month, CONTRACTOR shall be required to distribute additional flyers and door hangers in  
2952 neighborhoods where parked cars severely hamper sweeping efforts and such other areas as  
2953 may be required by the CITY. CONTRACTOR will also keep on hand any other information as  
2954 required by the CITY for public distribution.

2955           14.02 Programs and Services. CONTRACTOR shall provide additional services and  
2956 programs as requested by CITY at a price to be mutually agreed upon between the  
2957 CONTRACTOR and the Director of Environmental Services. In the event the CONTRACTOR  
2958 and the Director of Environmental Services cannot reach a mutually agreed upon price for the  
2959 requested service or program, CITY shall have the right to procure the service of other vendors  
2960 or contractors to provide the requested service.

2961           14.03 News Media Relations. CONTRACTOR shall notify the CITY by fax or phone of  
2962 all requests for news media interviews related to the Program within twenty-four (24) hours of  
2963 CONTRACTOR'S receipt of the request. Before responding to any inquiries involving  
2964 controversial issues or any issues likely to affect participation or Service Recipient perception  
2965 of services, CONTRACTOR will discuss CONTRACTOR'S proposed response with the City  
2966 Representative.

2967           Copies of draft news releases or proposed trade journal articles shall be submitted to  
2968 CITY for prior review and approval at least five (5) working days in advance of release, except  
2969 where CONTRACTOR is required by any law or regulation to submit materials to any  
2970 regulatory agency in a shorter period of time, in which case CONTRACTOR shall submit such  
2971 materials to CITY simultaneously with CONTRACTOR'S submittal to such regulatory agency.

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2972 Copies of articles resulting from media interviews or news releases shall be provided to  
2973 the CITY within five (5) days after publication.

2974 **ARTICLE 15. EMERGENCY SERVICE PROVISIONS**

2975 15.01 In the event of a tornado, major storm, earthquake, fire, natural disaster, or  
2976 other such event, the City Representative may grant the CONTRACTOR a variance from  
2977 regular routes and schedules. As soon as practicable after such event, the CONTRACTOR  
2978 shall advise the City Representative when it is anticipated that normal routes and schedules  
2979 can be resumed. The City Representative shall make an effort through the local news media  
2980 to inform the public when regular services may be resumed. The clean-up from some events  
2981 may require that the CONTRACTOR hire additional equipment, employ additional personnel,  
2982 or work existing personnel on overtime hours to clean debris resulting from the event. The  
2983 CONTRACTOR shall receive additional compensation, above the normal compensation  
2984 contained in this Agreement, to cover the costs of rental equipment, additional personnel,  
2985 overtime hours and other documented expenses based on the rates set forth in Exhibit 1 to  
2986 this Agreement provided the CONTRACTOR has first secured written authorization and  
2987 approval from the CITY through the City Representative.

2988 15.02 Collection Services. The CONTRACTOR may be required to provide Collection  
2989 Services on an emergency services basis prior to July 1, 2002. If the CITY requires the  
2990 CONTRACTOR to provide emergency services, service rates shall be charged in accordance  
2991 with the rates set forth on Exhibit 1 to the Agreement.

2992 15.03 Street Sweeping.

2993 If during the term of the Agreement, circumstances exist which require work  
2994 associated with the Street Sweeping program but not specifically provided for by the  
2995 agreement to be performed, the City Representative may require such other associated work  
2996 (OAW) to be performed under the Agreement. When OAW is to be performed, the labor,  
2997 materials, and equipment used in the performance of such work shall be subject to the prior  
2998 written approval of the City Representative. Examples of OAW that the CONTRACTOR may be  
2999 required to perform include:

- 3000 ■ Performance of special sweeps
- 3001 ■ Flood clean-up
- 3002 ■ Street sanitation for parades and celebrations
- 3003 ■ Neighborhood clean-up activities
- 3004 ■ Any contingency where sweeper and supporting sweeper equipment could  
3005 assist in a particular instance.

3006 CONTRACTOR will be compensated based on the rates set forth in Exhibit 1

3007 provided the CONTRACTOR has first secured written authorization and approval from the  
3008 CITY through the City Representative.

3009           15.04 Collection Services. The CONTRACTOR may be required to provide Collection  
3010 Services on an emergency services basis prior to July 1, 2002. If the CITY requires the  
3011 CONTRACTOR to provide emergency services, service rates shall be charged in accordance  
3012 with the rates set forth on Exhibit 1 to the Agreement.

3013                           **ARTICLE 16. REPORTING REQUIREMENTS AND SYSTEM**

3014           16.01 Requirements. CONTRACTOR shall utilize the Customer Service System to  
3015 provide and record operating and customer service data elements as set forth in Exhibit 12,  
3016 which is attached to and incorporated in this Agreement.

3017                           The system will include the basic functions a CONTRACTOR will need in order  
3018 to perform its customer service and specific operational services. CONTRACTORS will have a  
3019 modem link to the system. Access will be limited to the information required for the  
3020 CONTRACTOR to perform the required services, such as service location information, property  
3021 owner information, customer information, routes and Collection days, and workorders. The  
3022 CITY will have access to all the information available to the CONTRACTOR and, additionally,  
3023 will control access to the financial and billing functions of the system. The CONTRACTOR and  
3024 the CITY will have access to all the service locations of all service types in the Service District.

3025                           The CITY will maintain all service location and property owner information. New  
3026 service locations will be added into the database by the CITY. The CITY will also have and  
3027 control the property ownership database that is used to update property owner records.

3028                           Both the CITY and the CONTRACTOR will be able to enter customer comments  
3029 and workorders for service requests. However, only the CITY will have the authority to close  
3030 workorders such that a charge is posted to the account. The system will allow for a workorder  
3031 to show that it has been completed without a charge being posted to an account.

3032           16.02 CITY Charge Codes. CONTRACTOR shall use the CITY service codes that  
3033 have been set up in the system. There are service codes for all the services the CITY  
3034 provides.

3035           16.03 Reports. Except as set forth in this Agreement or as requested by the City  
3036 Representative, CITY shall generate operational reports and information required to provide  
3037 payment to the CONTRACTOR, including the invoice. CONTRACTOR will have access to  
3038 reports and information related to the Service District that are necessary, in the opinion of the  
3039 CITY, for their operations and for providing information that the CITY requests. The CITY may  
3040 create these reports for the CONTRACTOR or allow the CONTRACTOR access to the  
3041 system's report writer function.

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**ARTICLE 17. NONDISCRIMINATION, PREVAILING  
WAGES, WORKER RETENTION**

3042  
3043

3044           17.01 Nondiscrimination. In the performance of all work and services under this  
3045 Agreement, CONTRACTOR shall not discriminate against any person on the basis of such  
3046 person's race, sex, color, national origin, religion, marital status or sexual orientation.  
3047 CONTRACTOR shall comply with all applicable local, state and federal laws and regulations  
3048 regarding nondiscrimination, including those prohibiting discrimination in employment.

3049           17.02 Prevailing Wages.

3050                   17.02.1 Prevailing Wages. Throughout the term of this Agreement,  
3051 CONTRACTOR shall pay Prevailing Wages to all drivers of Collection vehicles performing  
3052 Collection of Residential Waste (including commercial waste collected from a Mixed Use  
3053 Dwelling), Recyclable Materials, or wastes from a Large Civic Service Unit pursuant to this  
3054 Agreement. Initial prevailing wages will be provided by the CITY as of July 1, 2000. The  
3055 Prevailing Wages will be subject to adjustment on February 1 in each year of the term of this  
3056 Agreement beginning in calendar year 2001~~3~~, based on a review of the Consumer Price Index  
3057 for all Urban Consumers in the San Francisco-Oakland-San José area (U.S. Department of  
3058 Labor, Bureau of Labor Statistics).

3059                   17.02.2 Definition. For the purposes of this Section 17.02, "Prevailing Wages"  
3060 means:

3061                           17.02.2.1 The wages paid under a collective bargaining agreement  
3062 between CONTRACTOR and a recognized union representing Residential Solid Waste  
3063 Garbage truck drivers and/or Recyclable Materials truck drivers who perform services pursuant  
3064 to this Agreement; or

3065                           17.02.2.2 If there is no collective bargaining agreement as described in  
3066 17.02.2.1 above, not less than the prevailing rate of per diem wages for the employee  
3067 classification as determined by CITY'S Office of Equality Assurance Wage Determination.

3068                   17.02.3 No Compensation Adjustment. CONTRACTOR shall not be entitled to  
3069 any adjustments in the compensation paid to CONTRACTOR by CITY under this Agreement as  
3070 a result of any adjustment of the wage rates which CONTRACTOR is required to pay its  
3071 employees pursuant to the Prevailing Wage requirements of this Agreement. The annual  
3072 adjustments to CONTRACTOR'S compensation described in Article 6 of this Agreement shall  
3073 be independent of any change in the Prevailing Wages.

3074                   17.02.4 Verification of Compliance. CONTRACTOR shall provide to CITY'S  
3075 Contract Compliance Administrator, upon request of said Administrator, certified copies of  
3076 CONTRACTOR'S payroll records for the purpose of verification of CONTRACTOR'S  
3077 compliance with the Prevailing Wage requirements of this Agreement.

3078           17.03 Worker Retention. CONTRACTOR acknowledges that when Collection  
3079 Services are transferred to CONTRACTOR, workers who perform services for the City's  
3080 current contractors will be displaced from their employment. CONTRACTOR shall offer  
3081 employment to all qualified displaced workers who have been employed by the current  
3082 contractors for at least 120 days prior to July 1, 2002 (the Collection start-up date). Non-  
3083 management or non-supervisory workers of the current contractors who have been employed  
3084 for at least 120 days prior to the Collection start-up date and who would otherwise be  
3085 terminated or laid off shall be considered qualified displaced workers subject to the worker  
3086 retention requirements. CONTRACTOR shall not be required to create additional positions  
3087 that the CONTRACTOR does not need. CONTRACTOR shall not discharge qualified  
3088 displaced workers for at least ninety (90) days after the Collection start-up date, except for  
3089 cause. Thereafter, the continued employment of qualified displaced workers shall be under  
3090 the terms and conditions established for all of CONTRACTOR'S workers in the particular  
3091 classification.

3092           CONTRACTOR shall participate in a job fair for the displaced workers to be held  
3093 on a CITY-scheduled day during the period March 1, to March 8, 2002, to discuss employment  
3094 opportunities with such workers. The City Representative shall notify CONTRACTOR of the  
3095 date and place of the job fair at least seven (7) calendar days in advance.

3096           CONTRACTOR shall submit displaced worker hiring status reports to the City  
3097 Representative on the last working day of October 2002 and on the last working day of June  
3098 2003.

3099           **ARTICLE 18. SERVICE INQUIRIES AND COMPLAINTS**

3100           18.01 Customer Service System. All service inquiries and complaints shall be directed  
3101 to the CONTRACTOR through the Customer Service System. A representative of the  
3102 CONTRACTOR shall be available to receive the complaints during normal business hours. All  
3103 service complaints will be handled by the CONTRACTOR in a prompt and efficient manner. In  
3104 the case of a dispute between thea CONTRACTOR and a Service Recipient customer, the  
3105 matter will be reviewed and a decision made by the City Representative

3106           The CONTRACTOR will utilize the Customer Service System to maintain a  
3107 record of all inquiries and complaints in a manner prescribed by the CITY.

3108           For those complaints related to missed Collections that are received by 3:00  
3109 p.m. on a Work Day, the CONTRACTOR will return to the Service Unit address and Collect the  
3110 missed materials before leaving the Service District for the day. For those complaints related  
3111 to missed Collections that are received after 3:00 p.m. on a Work Day, the CONTRACTOR  
3112 shall have until the end of the following Work Day to resolve the complaint. For those  
3113 complaints related to repair or replacement of carts or bins, the appropriate Sections of Article  
3114 5 of this Agreement shall apply. At the end of each Work Day the CONTRACTOR shall utilize

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3115 the Customer Service System to provide the City Representative with a response to each  
3116 complaint which was received from a customer, or the CITY in the event the complaint was  
3117 made by the CITY, during the preceding Work Day.

3118 For those complaints related to missed sweeps that are received by 3:00 p.m.  
3119 on a Work Day, the CONTRACTOR will return to the service area and sweep the missed  
3120 materials before leaving the Service District for the day. For those complaints related to  
3121 missed sweeps that are received after 3:00 p.m. on a Work Day, the CONTRACTOR shall  
3122 have until the end of the following Work Day to resolve the complaint.

3123 CONTRACTOR agrees that it is in the best interest of the CITY that all  
3124 Residential Waste, Recyclable Materials Yard Trimmings and Civic Yard Trimmings be  
3125 Collected on the scheduled Collection day. Accordingly, missed Collections will normally be  
3126 Collected as set forth above regardless of the reason that the Collection was missed.  
3127 However, in the event a Service Recipient requests missed Collection service more than two  
3128 (2) times in any consecutive two (2) month period the CITY will work with the CONTRACTOR  
3129 to determine an appropriate resolution to that situation. In the event the CONTRACTOR  
3130 believes any complaint to be without merit, CONTRACTOR shall utilize the Customer Service  
3131 System to immediately notify the City Representative. The City Representative will investigate  
3132 all disputed complaints and render a decision.

3133 **ARTICLE 19. QUALITY OF PERFORMANCE OF CONTRACTOR**

3134 19.01 Intent. CONTRACTOR acknowledges and agrees that one of CITY'S primary  
3135 goals in entering into this Agreement is to ensure that the Collection Services are of the  
3136 highest caliber, that Service Recipient satisfaction remains at the highest level, that maximum  
3137 diversion levels are achieved, and that materials Collected are put to the highest and best use  
3138 to the extent possible.

3139 19.02 Service Supervisor. CONTRACTOR shall assign a qualified supervisor to be in  
3140 charge of the *(to be inserted)* Service within the Service District and shall provide the name of  
3141 that person in writing to the City Representative within thirty (30) days of the execution of this  
3142 Agreement, and annually by July 1 of each subsequent Agreement Year of the term of this  
3143 Agreement, and any other time the person in that position changes. The supervisor shall be  
3144 physically located in the Service District and available to the Contract Manager CITY through  
3145 the use of telecommunication equipment at all times that CONTRACTOR is providing *(to be*  
3146 *inserted)* Services. In the event the supervisor is unavailable due to illness or vacation,  
3147 CONTRACTOR shall designate an acceptable substitute who shall be available and who has  
3148 the authority to act in the same capacity as the supervisor.

3149 19.03 Contract Manager. CONTRACTOR shall designate a Contract Manager and  
3150 shall provide the name of that person in writing to the CITY within thirty (30) days of the  
3151 execution of this Agreement and annually by July 1 of each subsequent Agreement Year of

3152 this Agreement and any other time the person in that position changes. The Contract Manager  
3153 shall be available to the CITY through the use of telecommunications equipment at all times  
3154 that CONTRACTOR is providing (to be inserted) Services in the Service Area. The Contract  
3155 Manager shall provide the CITY with an emergency phone number where the Contract  
3156 Manager can be reached outside of normal business hours.

3157 19.0319.04 Street Sweeping Quality of Work. The standards of performance which  
3158 CONTRACTOR is obligated to meet are those good street sweeping practices which leave the  
3159 serviced area in a debris and dirt free condition. Pictorial representations contained in a binder  
3160 dated August 1996 are on file in the Streets and Traffic Department. These pictorial  
3161 representations, incorporated herein by reference, shall establish the standards to determine  
3162 compliance for this portion of the work.

3163 19.0419.05 Administrative Charges. It shall be the duty of CONTRACTOR to perform  
3164 services under this Agreement in such a manner as to implement the goals set forth in  
3165 Section 19.01 above. In the event CONTRACTOR fails to perform the specific services set  
3166 forth below in this Agreement, CITY may assess an administrative charge against  
3167 CONTRACTOR and may deduct such charges from any monies due or which may become  
3168 due to CONTRACTOR in the following amounts:

a.	Failure or neglect to resolve each complaint within the time set forth in <u>ArticleSection</u> 18.	\$500.00 per incident per Service Recipient
b.	Failure to clean up spillage or litter caused by CONTRACTOR.	\$300.00 per incident per location.
c.	Failure to repair damage to customer property caused by CONTRACTOR or its personnel.	\$500.00 per incident per location.
d.	Failure to maintain equipment in a clean, safe, and sanitary manner.	\$500.00 per incident per day.
e.	Failure to have a vehicle operator properly licensed.	\$500.00 per incident per day.
f.	Failure to maintain office hours as required by this Agreement.	\$500.00 per incident per day.
g.	Failure to maintain or timely submit to CITY all documents and reports required under the provisions of this Agreement.	\$500.00 per incident per day.
h.	Failure to properly cover materials in Collection vehicles.	\$500.00 per incident.
i.	Failure to display CONTRACTOR'S name and City customer service phone number on Collection and Street Sweeping vehicles.	\$500.00 per incident per day.
j.	Failure to comply with the hours of operation as required by this Agreement.	\$500.00 per incident per day.
k.	Failure or neglect to complete at least 90 percent of each route on the regular scheduled Collection or Residential Street Sweeping Service Work Day.	\$1,000.00 for each route not completed.

i.	Changing routes <del>or route order</del> without proper notification to the City Representative.	\$500.00 per incident per day.
m.	Commingling Residential Solid Waste with Recyclable Materials.	\$1,000.00 per incident.
n.	Commingling of materials Collected inside and outside the City of San Jose.	\$1,000.00 per incident.
o.	Failure to repair or replace damaged <del>Garbage or Recycling</del> <del>C</del> arts <del>or bins</del> within the time required by this Agreement.	\$100.00 per incident per day.
p.	Failure to deliver or exchange carts or bins within the time required by this Agreement.	\$100.00 per incident per day.
q.	Failure to provide adequate primary and alternate capacity to accept and process Recyclable Materials <del>or Yard Trimmings</del> .	\$1,000.00 per day.
r.	Failure to have CONTRACTOR personnel in proper uniform.	\$100.00 per incident per day.
s.	Disposal of Recyclable Materials or Yard Trimmings in the Disposal Facility without first obtaining the required permission of the CITY.	\$500.00 per occurrence
t.	Failure to provide required communications equipment.	\$100.00 per incident per day.
u.	Failure to comply with alternate daily cover requirements.	\$1,000 per incident per day.
v.	Incomplete or improper sweeping of a street.	\$500.00 per incident per day.
w.	Failure to clean up Yard Trimmings piles in the proper manner.	\$100.00 per incident per day.
x.	Failure to clean and sweep each Street Sweeping dumpsite at the end of each Work Day in the proper manner.	\$1,000 per incident per day.
y.	Failure to deliver any <del>Collected materials Residential Waste, Recyclable Materials, or Yard Trimmings</del> to the Disposal Facility, Materials Recycling Facility, or Yard Trimmings Processing Facility, <del>as appropriate, respectively</del> , except as otherwise expressly provided in this Agreement.	\$5,000 first failure \$25,000 each subsequent failure
z.	Delivery to the Disposal Facility of any Residential Solid Waste Collected outside of the City boundaries of San Jose commingled with that Collected as part of this Agreement.	\$5,000 first delivery \$25,000 each subsequent delivery
aa.	Failure to meet the minimum diversion requirements of this Agreement (calculated per calendar year).	Shortfall of 0.001% - 2%: \$10,000. Shortfall of 2.001% or greater: \$25,000

3169 19.0519.06 Procedure for Review of Administrative Charges. The City Representative  
 3170 may assess administrative charges pursuant to this Article 19 on a monthly basis. At the end  
 3171 of each month during the term of this Agreement, the City Representative shall issue a written  
 3172 notice to CONTRACTOR ("Notice of Assessment") of the administrative charges assessed and  
 3173 the basis for each assessment.

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3174 ~~19.05.4~~19.06.1 The assessment shall become final unless, within ten (10)  
3175 calendar days of the date of the notice of assessment, CONTRACTOR provides a written  
3176 request for a meeting with the Director of Environmental Services ("Director") to present  
3177 evidence that the assessment should not be made.

3178 ~~19.05.2~~19.06.2 The City Representative shall schedule a meeting between  
3179 CONTRACTOR and the Director or the Director's designee as soon as reasonably possible  
3180 after timely receipt of CONTRACTOR'S request.

3181 ~~19.05.3~~19.06.3 The Director or the Director's designee shall review  
3182 CONTRACTOR'S evidence and render a decision sustaining or reversing the administrative  
3183 charges as soon as reasonably possible after the meeting. Written notice of the decision shall  
3184 be provided to CONTRACTOR.

3185 ~~19.05.4~~19.06.4 In the event CONTRACTOR does not submit a written request  
3186 for a meeting within ten (10) days of the date of the Notice of Assessment, the City  
3187 Representative's determination shall be final and CITY may deduct the administrative charges  
3188 from amounts otherwise due to CONTRACTOR.

3189 ~~19.06~~19.07 CITY'S assessment or collection of administrative charges shall not  
3190 prevent CITY from exercising any other right or remedy, including the right to terminate this  
3191 Agreement, for CONTRACTOR'S failure to perform the work and services in the manner set  
3192 forth in this Agreement.

## 3193 **ARTICLE 20. PAYMENT WITHHELD**

3194 20.01 Withholding of Payment. In addition to express provisions contained elsewhere  
3195 in this Agreement, the CITY may withhold from any payment otherwise due the CONTRACTOR  
3196 such amount as determined necessary to protect the CITY'S interest, or, if it so elects, may  
3197 withhold or retain all or a portion of any monthly payment or refund payment on account of:

3198 20.01.1 Unsatisfactory progress of the work not caused by any condition  
3199 beyond the CONTRACTOR'S control;

3200 20.01.2 Defective work not corrected;

3201 20.01.3 CONTRACTOR'S failure to carry out instructions or orders of the CITY  
3202 or its representative;

3203 20.01.4 Execution of work not in accordance with the Agreement documents;

3204 20.01.5 Claim filed by or against the CONTRACTOR or reasonable evidence  
3205 indicating probable filing of claims;

3206 20.01.6 Failure of the CONTRACTOR to make payments to any subcontractor  
3207 for material or labor;

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3208 20.01.7 Unsafe working conditions allowed to persist by the CONTRACTOR;

3209 20.01.8 Failure of the CONTRACTOR to provide route schedules and other  
3210 reports as required by the CITY;

3211 20.01.9 Use of any subcontractors without the CITY'S prior written approval.

3212 20.02 Payment. Upon the CONTRACTOR'S satisfactory remedy of the above-listed  
3213 grounds for withholding payment, the CITY shall pay all withheld amounts within ten (10) Work  
3214 Days. The CITY shall not be liable for interest on any delayed or late payment.

3215 **ARTICLE 21. PERFORMANCE BOND**

3216 21.01 Performance Bond. Within ten (10) calendar days from the date the City  
3217 Council approves this Agreement, the CONTRACTOR shall furnish to the CITY, and keep  
3218 current, a Performance Bond in a form as set forth in Exhibit 4 to this Agreement, for the  
3219 faithful performance of this Contract and all obligations arising hereunder in an amount as  
3220 follows:

3221 21.01.1 From ten days from the date of the award of the Agreement until  
3222 December 31, 2002 and amount equal to twenty-five percent (25%) of the CONTRACTOR'S  
3223 estimated annual gross revenue for the first year of the Agreement.

3224 21.01.2 From January 1, 2003 through June 30, 2004, an amount equal to  
3225 twelve percent (12%) of the CONTRACTOR'S estimated gross revenue for the first Agreement  
3226 Year. Beginning July 1, 2004, upon written approval from the CITY, CONTRACTOR may  
3227 reduce the performance bond in increments of one percent (1%), e.g. if approved the July 1,  
3228 2004 bond would be equal to eleven percent (11%) of the estimated annual gross revenues of  
3229 the CONTRACTOR under this Agreement. The performance Bond shall never be less than six  
3230 percent (6%) of the estimated annual gross revenues of the CONTRACTOR under this  
3231 Agreement.

3232 The performance bond shall be executed by a surety company  
3233 licensed to do business in the State of California; having an "A-" or better rating by A. M. Best  
3234 or Standard and Poors; and included on the list of surety companies approved by the  
3235 Treasurer of the United States. On April 1, 2004, and annually thereafter, CONTRACTOR may  
3236 request in writing that the CITY allow the performance bond to be reduced as set forth in this  
3237 section. The CITY shall, at the sole option of the CITY, respond to the request in writing within  
3238 45 days of receipt of the written request. Nothing in this Agreement shall require that the CITY  
3239 approve the request of the CONTRACTOR nor shall the CITY have any obligation to provide  
3240 CONTRACTOR with it's reasoning for approving or denying the request.

3241 ~~11.02~~ 21.02 Letter of Credit. As an alternative to the performance bond required by  
3242 Section ~~21.01~~ 21.01, at CITY'S option, CONTRACTOR may deposit with CITY an irrevocable  
3243 letter of credit in an amount as set forth in Section 21.01. If allowed, the letter of credit must

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3244 be issued by an FDIC insured banking institution chartered to business in the state of  
3245 California, in the CITY'S name, and be callable at the discretion of the CITY. Nothing in this  
3246 Section shall, in any way, obligate the CITY to accept a letter of credit in lieu of the  
3247 performance bond.

3248 **ARTICLE 22. INSURANCE**

3249 22.01 Insurance Policies. CONTRACTOR shall secure and maintain throughout the  
3250 term of this Agreement insurance against claims for injuries to persons or damages to property  
3251 which may arise from or in connection with CONTRACTOR'S performance of work or services  
3252 under this Agreement. CONTRACTOR'S performance of work or services shall include  
3253 performance by CONTRACTOR'S employees, agents, representatives and subcontractors.

3254 22.02 Minimum Scope of Insurance. Insurance coverage shall be at least this broad:

3255 22.02.1 Insurance Services Office Form No. GL 0002 (Ed. 1/96) covering  
3256 Comprehensive General Liability and Insurance Services Office Form No. GL 0404 covering  
3257 Broad Form Comprehensive General Liability; or Insurance Services Office Commercial  
3258 General Liability coverage ("occurrence" form CG 0001), including X, C, U where applicable.

3259 22.02.2 Insurance Services Office Form No. CA 0001 (Ed. 12/93) covering  
3260 Automobile Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025.  
3261 Coverage shall also include code 8, "hired autos" and code 9 "non-owned autos".

3262 22.02.3 Workers' Compensation insurance as required by the California  
3263 Labor Code and Employers Liability Insurance.

3264 22.02.4 Hazardous Waste and Environmental Impairment Liability  
3265 Insurance.

3266 22.03 Minimum Limits of Insurance. CONTRACTOR shall maintain insurance limits no  
3267 less than:

3268 22.03.1 Comprehensive General Liability: \$3,000,000 combined single  
3269 limit per occurrence for bodily injury, personal injury and property damage. If Commercial  
3270 General Liability insurance with a general aggregate limit is used, either the general aggregate  
3271 limit shall apply separately to this Agreement or the general aggregate limit shall be  
3272 \$5,000,000.

3273 22.03.2 Automobile Liability: \$3,000,000 combined single limit per  
3274 accident for bodily injury and property damage.

3275 22.03.3 Workers' Compensation and Employers Liability: Workers'  
3276 Compensation limits as required by the California Labor Code and Employers Liability limits of  
3277 \$3,000,000 per accident.

3278                   22.03.4       Hazardous Waste and Environmental Impairment Liability:  
3279       \$3,000,000 per occurrence.

3280                   22.04 Deductibles and Self-Insured Retention. Any deductibles or self-insured  
3281 retention must be declared to, and approved by, CITY'S Risk Manager. At the option of CITY,  
3282 either: the insurer shall reduce or eliminate such deductibles or self-insured retention as  
3283 respects CITY, its officers, employees, agents and contractors; or CONTRACTOR shall procure  
3284 a bond guaranteeing payment of losses and related investigations, claim administration and  
3285 defense expenses in an amount specified by CITY'S Risk Manager.

3286                   22.05 Endorsements. The policies are to contain, or be endorsed to contain, the  
3287 following provisions:

3288                   22.05.1 General Liability and Automobile Liability Coverage.

3289                   22.05.1.1 The CITY, its officers, employees, agents and contractors  
3290 are to be covered as additional insureds as respects: Liability arising out of activities performed  
3291 by, or on behalf of, CONTRACTOR; products and completed operations of CONTRACTOR;  
3292 premises owned, leased or used by CONTRACTOR; and automobiles owned, leased, hired or  
3293 borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope  
3294 of protection afforded to CITY, its officers, employees, agents and contractors.

3295                   22.05.1.2 CONTRACTOR'S insurance coverage shall be primary  
3296 insurance as respects CITY, its officers, employees, agents and contractors. Any insurance, or  
3297 self-insurance maintained by CITY, its officers, employees, agents or contractors shall be in  
3298 excess of CONTRACTOR'S insurance and shall not contribute with it.

3299                   22.05.1.3 Any failure to comply with reporting provisions of the  
3300 policies shall not affect coverage provided to CITY, its officers, employees, agents, or  
3301 contractors.

3302                   22.05.1.4 Coverage shall state that CONTRACTOR'S insurance shall  
3303 apply separately to each insured against whom claim is made or suit is brought, except with  
3304 respect to the limits of the insurer's liability.

3305                   22.05.2       All Coverage. Each insurance policy required by this Agreement  
3306 shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced  
3307 in limits except after thirty (30) days prior written notice has been given to CITY.

3308                   22.06 Acceptability of Insurers. Insurance is to be placed with insurers acceptable to  
3309 CITY'S Risk Manager.

3310                   22.07 Verification of Coverage. CONTRACTOR shall furnish CITY with certificates of  
3311 insurance and with original endorsements affecting coverage required by this Agreement. The  
3312 certificates and endorsement for each insurance policy are to be signed by a person  
3313 authorized by that insurer to bind coverage on its behalf. CONTRACTOR shall furnish CITY

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3314 with a new certificate of insurance and endorsements on each renewal of coverage or change  
3315 of insurers.

3316 22.07.1 Proof of insurance shall be mailed to the following address or any  
3317 subsequent address as may be directed in writing by the CITY'S Risk Manager:

3318 CITY OF SAN JOSE  
3319 Risk Management  
3320 ~~City of San Jose~~  
3321 152 N. 3<sup>rd</sup> St., Suite 904  
3322 San Jose, California 95112-5509

3323 ~~41-08~~22.08 Subcontractors. CONTRACTOR shall include all subcontractors as  
3324 insureds under its policies or shall obtain separate certificates and endorsements for each  
3325 subcontractor.

3326 22.09 Modification of Insurance Requirements. The insurance requirements provided  
3327 in this Agreement may be modified or waived by CITY'S Risk Manager, in writing, upon the  
3328 request of CONTRACTOR if the CITY'S Risk Manager determines such modification or waiver  
3329 is in the best interest of CITY considering all relevant factors, including exposure to CITY.

3330 22.10 Rights of Subrogation. All required insurance policies shall preclude any  
3331 underwriter's rights of recovery or subrogation against CITY with the express intention of the  
3332 parties being that the required insurance coverage protects both parties as the primary  
3333 coverage for any and all losses covered by the above-described insurance. CONTRACTOR  
3334 shall ensure that any companies issuing insurance to cover the requirements contained in this  
3335 Agreement agree that they shall have no recourse against CITY for payment or assessments  
3336 in any form on any policy of insurance. The clauses 'Other Insurance Provisions' and 'Insured  
3337 Duties in the Event of an Occurrence, Claim or Suit' as it appears in any policy of insurance in  
3338 which CITY is named as an additional insured shall not apply to CITY.

3339 **ARTICLE 23. INDEMNIFICATION**

3340 23.01 Indemnification. CONTRACTOR shall indemnify and hold harmless CITY,  
3341 CITY'S contractors, and the public officials, officers, directors, employees, agents and other  
3342 contractors of each of them, from and against any and all claims, costs, losses and damages  
3343 (including but not limited to all fees and charges of engineers, architects, attorneys and other  
3344 professionals as well as all Court or other dispute resolution costs), liabilities, expenditures or  
3345 causes of action of any kind (including negligent, reckless, willful or intentional acts or  
3346 omissions of the CONTRACTOR, any subcontractor, any supplier, any person or organization  
3347 directly or indirectly employed by any of them to perform or furnish any services or anyone for  
3348 whose acts any of them may be liable), arising from, relative to or caused by the performance  
3349 of the services. This indemnity includes but is not limited to claims attributable to bodily injury,  
3350 sickness, disease or death and to injury or destruction of tangible property. CONTRACTOR



3388 notice, to be served as provided in Article 42, upon the happening of any one of the following  
3389 events:

3390           24.01.1 The CONTRACTOR shall take the benefit of any present or future  
3391 insolvency statute, or shall make a general assignment for the benefit of creditors, or file a  
3392 voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its  
3393 reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or  
3394 under any other law or statute of the United States or any state thereof, or consent to the  
3395 appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

3396           24.01.2 By order or decree of a Court, the CONTRACTOR shall be adjudged  
3397 bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of  
3398 the stockholders of the CONTRACTOR, seeking its reorganization or the readjustment of its  
3399 indebtedness under the Federal bankruptcy laws or under any law or statute of the United  
3400 States or of any state thereof, provided that if any such judgment or order is stayed or vacated  
3401 within sixty (60) days after the entry thereof, any notice of default shall be and become null,  
3402 void and of no effect; unless such stayed judgment or order is reinstated in which case, said  
3403 default shall be deemed immediate; or

3404           24.01.3 By, or pursuant to, or under the authority of any legislative act,  
3405 resolution or rule or any order or decree of any Court or governmental board, agency or officer  
3406 having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or  
3407 substantially all of the property of the CONTRACTOR, and such possession or control shall  
3408 continue in effect for a period of sixty (60) days; or

3409           24.01.4 The CONTRACTOR has defaulted, by failing or refusing to pay in a  
3410 timely manner the administrative charges or other monies due the CITY and said default is not  
3411 cured within thirty (30) days of receipt of written notice by CITY to do so; or

3412           24.01.5 The CONTRACTOR has defaulted by allowing any final judgment for  
3413 the payment of money to stand against it unsatisfied and said default is not cured within thirty  
3414 (30) days of receipt of written notice by CITY to do so; or

3415           24.01.6 In the event that the monies due the CITY under Section 24.01.4  
3416 above or an unsatisfied final judgment under Section 24.01.5 above is the subject of a judicial  
3417 proceeding, the CONTRACTOR shall not be in default if the sum of money is bonded. All  
3418 bonds shall be in the form acceptable to the CITY Attorney; or

3419           24.01.7 The CONTRACTOR has defaulted, by failing or refusing to perform or  
3420 observe the terms, conditions or covenants in this Agreement or any of the rules and  
3421 regulations promulgated by the CITY pursuant thereto or has wrongfully failed or refused to  
3422 comply with the instructions of the City Representative relative thereto and said default is not  
3423 cured within thirty (30) days of receipt of written notice by the CITY to do so, or if by reason of  
3424 the nature of such default, the same cannot be remedied within thirty (30) days following  
3425 receipt by the CONTRACTOR of written demand from the CITY to do so, the CONTRACTOR

3426 fails to commence the remedy of such default within said thirty (30) days following such written  
3427 notice or having so commenced shall fail thereafter to continue with diligence the curing  
3428 thereof (with the CONTRACTOR having the burden of proof to demonstrate (a) that the default  
3429 cannot be cured within thirty (30) days, and (b) that it is proceeding with diligence to cure said  
3430 default, and such default will be cured within a reasonable period of time). However,  
3431 notwithstanding anything contained herein to the contrary, for the failure of the CONTRACTOR  
3432 to provide Collection Services for a period of three (3) consecutive Work Days, the CITY may  
3433 secure the CONTRACTOR'S records on the fourth (4th) Work Day in order to provide interim  
3434 Collection services until such time as the matter is resolved and the CONTRACTOR is again  
3435 able to perform pursuant to this Agreement; provided, however, if the CONTRACTOR is unable  
3436 for any reason or cause to resume performance at the end of thirty (30) Work Days all liability  
3437 of the CITY under this Agreement to the CONTRACTOR shall cease and this Agreement may  
3438 be deemed terminated by the CITY.

3439         24.02 Violations. Notwithstanding the foregoing and as supplemental and additional  
3440 means of termination of this Agreement under this Article, in the event that the  
3441 CONTRACTOR'S record of performance show that the CONTRACTOR has frequently,  
3442 regularly or repetitively defaulted in the performance of any of the covenants and conditions  
3443 required herein to be kept and performed by the CONTRACTOR, in the opinion of the CITY  
3444 and regardless of whether the CONTRACTOR has corrected each individual condition of  
3445 default, the CONTRACTOR shall be deemed a "habitual violator", shall be deemed to have  
3446 waived the right to any further notice or grace period to correct, and all of said defaults shall be  
3447 considered cumulative and collectively shall constitute a condition of irredeemable default.  
3448 The CITY shall thereupon issue the CONTRACTOR a final warning citing the circumstances  
3449 therefor, and any single default by the CONTRACTOR of whatever nature, subsequent to the  
3450 occurrence of the last of said cumulative defaults, shall be grounds for immediate termination  
3451 of the Agreement. In the event of any such subsequent default, the CITY may terminate this  
3452 Agreement upon giving of written final notice to the CONTRACTOR, such cancellation to be  
3453 effective upon the date specified in the CITY'S written notice to the CONTRACTOR, and all  
3454 contractual fees due hereunder plus any and all charges and interest shall be payable to said  
3455 date, and the CONTRACTOR shall have no further rights hereunder. Immediately upon the  
3456 specified date in such final notice the CONTRACTOR shall proceed to cease any further  
3457 performance under this Agreement.

3458         24.03 Effective Date. In the event of the aforesaid events specified in Sections 24.01  
3459 and 24.02 above, and except as otherwise provided in said subsections, termination shall be  
3460 effective upon the date specified in the CITY'S written notice to the CONTRACTOR and upon  
3461 said date this Agreement shall be deemed immediately terminated and upon such termination  
3462 all liability of the CITY under this Agreement to the CONTRACTOR shall cease, and the CITY  
3463 shall have the right to call the performance bond and shall be free to negotiate with other  
3464 contractors for the operation of the herein specified services. The CONTRACTOR for failure to





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## ARTICLE 29. CONTRACTOR'S PERSONNEL

3539           29.01 Personnel Requirements. The CONTRACTOR shall employ and assign  
3540 qualified personnel to perform all services set forth herein. The CONTRACTOR shall be  
3541 responsible for ensuring that its employees comply with all applicable laws and regulations and  
3542 meet all federal, state and local requirements related to their employment and position.

3543           29.01.1           The CITY may request the transfer of any employee of the  
3544 CONTRACTOR who materially violates any provision hereof, or who is wanton, negligent, or  
3545 discourteous in the performance of his duties.

3546           29.01.2           CONTRACTOR'S field operations personnel shall be required to  
3547 wear a clean uniform shirt bearing the CONTRACTOR'S name. ~~The color of the uniform shirt~~  
3548 ~~shall be other than that of CITY employees.~~ CONTRACTOR'S employees who normally come  
3549 into direct contact with the public, including drivers, shall bear some means of individual  
3550 photographic identification such as a name tag or identification card.

3551           29.01.3           Each driver of a Collection vehicle shall at all times carry a valid  
3552 California driver's license and all other required licenses for the type of vehicle that is being  
3553 operated.

3554           29.01.4           Each driver of a Collection vehicle shall at all times comply with  
3555 all applicable state and federal laws, regulations and requirements.

3556           29.01.5           CONTRACTOR'S employees, officers, and agents shall at no  
3557 time be allowed to identify themselves or in any way represent themselves as being employees  
3558 of the CITY.

3559           29.01.6           The CONTRACTOR'S name and the Customer Service  
3560 telephone number shall be properly displayed on all Collection vehicles.

3561

## ARTICLE 30. EXEMPT WASTE

3562           30.01 The CONTRACTOR shall not be required to Collect or dispose of Exempt  
3563 Waste, but may offer such services. All such Collection and disposal of Exempt Waste is not  
3564 regulated under this Agreement, but if provided by the CONTRACTOR shall be in strict  
3565 compliance with all federal, state and local laws and regulations.

3566

## ARTICLE 31. INDEPENDENT CONTRACTOR

3567           31.01 In the performance of services pursuant to this Agreement, CONTRACTOR  
3568 shall be an independent contractor and not an officer, agent, servant or employee of CITY.  
3569 CONTRACTOR shall have exclusive control of the details of the services and work performed  
3570 and over all persons performing such services and work. CONTRACTOR shall be solely  
3571 responsible for the acts and omissions of its officers, agents, employees, contractors and  
3572 subcontractors, if any. Neither CONTRACTOR or its officers, employees, agents, contractors

3573 or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits,  
3574 or any other benefits which accrued to CITY employees and CONTRACTOR expressly waives  
3575 any claim it may have or acquire to such benefits.

3576 **ARTICLE 32. LAWS TO GOVERN**

3577 32.01 The law of the State of California shall govern the rights, obligations, duties and  
3578 liabilities of CITY and CONTRACTOR under this Agreement and shall govern the interpretation  
3579 of this Agreement.

3580 **ARTICLE 33. CONSENT TO JURISDICTION**

3581 33.01 The parties agreed that any litigation between CITY and CONTRACTOR  
3582 concerning or arising out of this Agreement shall be filed and maintained exclusively in the  
3583 Municipal or Superior Courts of Santa Clara County, State of California, or in the United States  
3584 District Court for the Northern District of California to the fullest extent permissible by law.  
3585 Each party consents to service of process in any manner authorized by California law.

3586 **ARTICLE 34. ASSIGNMENT AND SUBCONSULTING**

3587 34.01 No assignment of this Agreement or any right occurring under this Agreement  
3588 shall be made in whole or in part by the CONTRACTOR without the express written consent of  
3589 the Director of Environmental Services. The CITY shall have full discretion to approve or deny,  
3590 with or without cause, any proposed or actual assignment by the CONTRACTOR. Any  
3591 assignment of this Agreement made by the CONTRACTOR without the express written  
3592 consent of the Director of Environmental Services shall be null and void and shall be grounds  
3593 for the CITY to declare a default of this Agreement and immediately terminate this Agreement  
3594 by giving written notice to the CONTRACTOR, and upon the date of such notice this  
3595 Agreement shall be deemed immediately terminated, and upon such termination all liability of  
3596 the CITY under this Agreement to the CONTRACTOR shall cease, and the CITY shall have the  
3597 right to call the performance bond and shall be free to negotiate with other contractors, the  
3598 CONTRACTOR, or any other person or company for the service which is the subject of this  
3599 Agreement. In the event of any assignment, the assignee shall fully assume all the liabilities of  
3600 the CONTRACTOR.

3601 34.02 The use of a subcontractor to perform services under this Agreement shall not  
3602 constitute delegation of CONTRACTOR'S duties provided that CONTRACTOR has received  
3603 prior written authorization from the Director of Environmental Services to subcontract such  
3604 services and the Director of Environmental Services has approved a subcontractor who will  
3605 perform such services. CONTRACTOR shall be responsible for directing the work of  
3606 CONTRACTOR'S subcontractors and any compensation due or payable to CONTRACTOR'S  
3607 subcontractor shall be the sole responsibility of CONTRACTOR. The Director of

3608 Environmental Services shall have the right to require the removal of any approved  
3609 subcontractor for reasonable cause. The subcontractors listed in Exhibit 11, which is attached  
3610 to and incorporated in this Agreement, are hereby approved by the CITY. Additional  
3611 subcontractors may be used upon approval by the Director of Environmental Services in  
3612 accordance with this Article.

3613 **ARTICLE 35. COMPLIANCE WITH LAWS**

3614 35.01 In the performance of this Agreement, CONTRACTOR shall comply with all  
3615 applicable laws, regulations, ordinances and codes of the federal, state and local  
3616 governments, including without limitation the Charter of the City of San Jose and the San Jose  
3617 Municipal Code.

3618 35.02 CITY shall provide written notice to CONTRACTOR of any planned amendment  
3619 to Chapter 9.10 of the San Jose Municipal Code that would substantially affect the  
3620 performance of CONTRACTOR'S services pursuant to this Agreement. Such notice shall be  
3621 provided at least thirty (30) days prior to the City Council's approval of such an amendment.

3622 **ARTICLE 36. PERMITS AND LICENSES**

3623 36.01 CONTRACTOR shall obtain, at its own expense, all permits and licenses  
3624 required by law or ordinance and maintain same in full force and effect throughout the term of  
3625 this Agreement. CONTRACTOR shall provide proof of such permits, licenses or approvals and  
3626 shall demonstrate compliance with the terms and conditions of such permits, licenses and  
3627 approvals upon the request of the City Representative.

3628 **ARTICLE 37. OWNERSHIP OF WRITTEN MATERIALS**

3629 37.01 All reports, documents, brochures, public education materials, and other written,  
3630 printed, electronic or photographic materials developed by CITY or CONTRACTOR in  
3631 connection with the services to be performed under this Agreement or in connection with the  
3632 Recycle Plus Program, whether developed directly or indirectly by CITY or CONTRACTOR  
3633 shall be and shall remain the property of CITY without limitation or restrictions on the use of  
3634 such materials by CITY. CONTRACTOR shall not use such materials in connection with any  
3635 project not connected with this Agreement without the prior written consent of the City  
3636 Representative. This Article 37 does not apply to ideas or concepts described in such  
3637 materials and does not apply to the format of such materials.

3638 **ARTICLE 38. WAIVER**

3639 38.01 The waiver by CITY or CONTRACTOR of any breach for violation of any term  
3640 covenant or condition of this Agreement shall not be deemed to be a waiver of any other term,

3641 covenant or condition or any subsequent breach or violation of the same or of any other term,  
3642 covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other  
3643 monies which may become due from CONTRACTOR to CITY shall not be deemed to be a  
3644 waiver by CITY of any breach for violation of any term, covenant or condition of this  
3645 Agreement.

3646 **ARTICLE 39. PROHIBITION AGAINST GIFTS**

3647 39.01 CONTRACTOR represents that CONTRACTOR is familiar with CITY'S  
3648 prohibition against the acceptance of any gift by a CITY officer or designated employee, which  
3649 prohibition is found in Chapter 10.36 of the San Jose Municipal Code. CONTRACTOR shall  
3650 not offer any CITY officer or designated employee any gift prohibited by said Chapter.

3651 **ARTICLE 40. DISQUALIFICATION OF FORMER EMPLOYEES**

3652 40.01 CONTRACTOR represents that CONTRACTOR is familiar with the provisions of  
3653 Part 7 of Chapter 10.36 of the San Jose Municipal Code relating to the disqualification of  
3654 former officers and employees of CITY in matters that are connected with former duties or  
3655 official responsibility. CONTRACTOR shall not utilize, either directly or indirectly, any officer,  
3656 employee, or agent of CONTRACTOR to perform services under this Agreement, if in the  
3657 performance of such services by the officer, employee or agent, CONTRACTOR would be in  
3658 violation of said Part 7 of Chapter 10.36 of the San Jose Municipal Code.

3659 **ARTICLE 41. POINT OF CONTACT**

3660 41.01 The day-to-day dealings between the CONTRACTOR and the CITY shall be  
3661 between the CONTRACTOR and the City Representative.

3662 **ARTICLE 42. NOTICES**

3663 42.01 Except as provided herein, whenever either party desires to give notice to the  
3664 other, it must be given by written notice, ~~sent by certified U.S. mail, with return receipt~~  
3665 ~~requested~~, addressed to the party for whom it is intended, at the place last specified and to the  
3666 place for giving of notice in compliance with the provisions of this paragraph. For the present,  
3667 the parties designate the following as the respective persons and places for giving of notice:

3668 As to the CITY:  
3669 Director  
3670 Department of Environmental Services  
3671 777 North First Street, Suite 300  
3672 San Jose, CA 95112  
3673 Fax: (408) 277-2565

3674 With a copy to:

---

3675 City Representative  
3676 Recycle Plus Program  
3677 Department of Environmental Services  
3678 777 North First Street, Suite 300  
3679 San Jose, CA 95112  
3680 Fax: (408) 277-3669

3681 As to the CONTRACTOR:

3682 \_\_\_\_\_  
3683 \_\_\_\_\_  
3684 \_\_\_\_\_  
3685 \_\_\_\_\_

3686 ~~41.02~~42.02 Notices shall be effective when received at the address as specified  
3687 above. Changes in the respective address to which such notice is to be directed may be made  
3688 by written notice. Facsimile transmission is acceptable notice, effective when received,  
3689 however, facsimile transmissions received (i.e. printed) after 4:30 p.m. or on weekends or  
3690 holidays, will be deemed received on the next business day. The original of items that are  
3691 transmitted by facsimile equipment must also be mailed as required herein.

3692 42.03 Notice by CITY to CONTRACTOR of a Collection or other Service Recipient  
3693 problem or complaint may be given to CONTRACTOR orally by telephone at CONTRACTOR'S  
3694 local office with confirmation sent to CONTRACTOR through the Customer Service System by  
3695 the end of the Work Day.

3696 **ARTICLE 43. TRANSITION TO NEXT CONTRACTOR**

3697 43.01 In the event CONTRACTOR is not awarded an Agreement to continue to  
3698 provide Collection Services following the expiration or early termination of this Agreement,  
3699 CONTRACTOR shall cooperate fully with CITY and any subsequent contractors to assure a  
3700 smooth transition of services described in this Agreement. Such cooperation shall include but  
3701 not be limited to transfer of computer data, files and tapes; providing routing information, route  
3702 maps, vehicle fleet information, and list of Service Recipients; providing a complete inventory  
3703 of all carts and bins; providing adequate labor and equipment to complete performance of all  
3704 Collection Services required under this Agreement; taking all actions necessary to transfer  
3705 ownership of carts and bins, as appropriate, to CITY; including transporting such containers to  
3706 a location designated by the City Representative; coordinating Collection of materials set out in  
3707 new containers if new containers are provided for a subsequent Agreement and providing  
3708 other reports and data required by this Agreement.

3709

#### **ARTICLE 44. CONTRACTOR'S RECORDS**

3710           44.01 CONTRACTOR shall maintain any and all letters, books of account, invoices,  
3711 vouchers, canceled checks, and other records or documents evidencing or relating to charges  
3712 for services or expenditures and disbursements charged to CITY for a minimum period of three  
3713 (3) years, or for any longer period required by law, from the date of final payment to  
3714 CONTRACTOR pursuant to this Agreement.

3715           44.02 CONTRACTOR shall maintain all documents and records which demonstrate  
3716 performance under this Agreement for a minimum period of three (3) years, or for any longer  
3717 period required by law, from the date of termination or completion of this Agreement.

3718           44.03 Any records or documents required to be maintained pursuant to this Agreement  
3719 shall be made available for inspection or audit, at any time during regular business hours, upon  
3720 written request by the City Representative, the Director of the Department of Environmental  
3721 Services, City Attorney, City Auditor, City Manager, or a designated representative of any of  
3722 these officers. Copies of such documents shall be provided to CITY for inspection at  
3723 Environmental Services office when it is practical to do so. Otherwise, unless an alternative  
3724 site is mutually agreed upon, the records shall be available at CONTRACTOR'S address  
3725 indicated for receipt of notices in this Agreement.

3726           44.04 Where CITY has reason to believe that such records or documents may be lost  
3727 or discarded due to the dissolution, disbandment or termination of CONTRACTOR'S business,  
3728 CITY may, by written request or demand of any of the above named officers, require that  
3729 custody of the records be given to CITY and that the records and documents be maintained in  
3730 City Hall. Access to such records and documents shall be granted to any party authorized by  
3731 CONTRACTOR, CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-interest.

3732

#### **ARTICLE 45. USE OF RECYCLED PRODUCTS**

3733           45.01 Any products or materials included in the Recycled Products Requirement List  
3734 set forth in Exhibit 22, which is attached to and incorporated in this Agreement, that are used  
3735 by CONTRACTOR in the performance of services pursuant to this Agreement shall meet the  
3736 minimum recycled-content standards set out in said List. CONTRACTOR may request an  
3737 exemption from the requirements of this Article by submitting such request in writing to CITY'S  
3738 Director of the Department of Environmental Services. Such a request may be approved or  
3739 denied, in whole or in part, at said Director's sole discretion. CONTRACTOR shall not use, in  
3740 the performance of services under this Agreement, any product or material that does not meet  
3741 the standards set out in the list without the prior written approval of said Director.

3742

#### **ARTICLE 46. ENTIRE AGREEMENT**

3743           46.01 This Agreement and the Exhibits attached hereto constitute the entire  
3744 Agreement and understanding between the parties hereto, and it shall not be considered

3745 modified, altered, changed or amended in any respect unless in writing and signed by the  
3746 parties hereto.

3747 **ARTICLE 47. SEVERABILITY**

3748 47.01 If any provision of this Agreement or the application of it to any person or  
3749 situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement  
3750 and the application of such provisions to persons or situations other than those as to which it  
3751 shall have been held invalid or unenforceable, shall not be affected, shall continue in full force  
3752 and effect, and shall be enforced to the fullest extent permitted by law.

3753 **ARTICLE 48. RIGHT TO REQUIRE PERFORMANCE**

3754 48.01 The failure of the CITY at any time to require performance by the  
3755 CONTRACTOR of any provision hereof shall in no way affect the right of the CITY thereafter to  
3756 enforce same. Nor shall waiver by the CITY of any breach of any provision hereof be taken or  
3757 held to be a waiver of any succeeding breach of such provision or as a waiver of any provision  
3758 itself.

3759 **ARTICLE 49. ALL PRIOR AGREEMENTS SUPERSEDED**

3760 49.01 This document incorporates and includes all prior negotiations, correspondence,  
3761 conversations, agreements and understandings applicable to the matters contained in this  
3762 Agreement and the parties agree that there are no commitments, agreements or  
3763 understandings concerning the subject matter of this Agreement that are not contained in this  
3764 document. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be  
3765 predicated upon any prior representations or agreements, whether oral or written.

3766 **ARTICLE 50. HEADINGS**

3767 50.01 Headings in this document are for convenience of reference only and are not to  
3768 be considered in any interpretation of this Agreement.

3769 **ARTICLE 51. EXHIBITS**

3770 51.01 Each Exhibit referred to in this Agreement forms an essential part of this  
3771 Agreement. Each such Exhibit is a part of this Agreement and each is incorporated by this  
3772 reference.

3773

**ARTICLE 52. EFFECTIVE DATE**

3774           52.01 This Agreement shall become effective at such time as it is properly executed  
3775 by the CITY and the CONTRACTOR and the CONTRACTOR shall begin *(to be inserted)*  
3776 Services, as covered herein, as of July 1, 2002.

---

3777 IN WITNESS WHEREOF, the CITY and the CONTRACTOR have executed this  
3778 Agreement on the respective date(s) below each signature.

3779 CITY OF SAN JOSE, CALIFORNIA  
3780 A Municipal Corporation

3781 (CITY SEAL) By: \_\_\_\_\_

3782 Date: \_\_\_\_\_

3783 ATTEST:

3784 \_\_\_\_\_  
3785 City Clerk

3786 Date: \_\_\_\_\_

3787 Approved as to form:

3788 \_\_\_\_\_  
3789 City Attorney

3790 Date: \_\_\_\_\_

3791 CONTRACTOR

3792 \_\_\_\_\_  
3793 (Company Name)

3794 By: \_\_\_\_\_

3795 Date: \_\_\_\_\_

3796 ATTEST:

3797 \_\_\_\_\_  
3798 Witness

3799 Date: \_\_\_\_\_