

**AGENDA FOR THE REGULAR MEETING
DUNSMUIR CITY COUNCIL**

Via Zoom <https://us02web.zoom.us/j/84424135442>

Meeting ID:844 2413 5442

Dial by your location +1 669 900 6833

SEPTEMBER 17TH 2020

CLOSED SESSION: 5:30 PM

REGULAR SESSION: 6:00 PM

As a courtesy, please turn off cell phones and electronic devices while the meeting is in session. Thank you.

1. CALL TO ORDER AND FLAG SALUTE

2. ROLL CALL

3. PUBLIC COMMENT ON CLOSED SESSION ITEM

4. ADJOURN TO CLOSED SESSION

1. Anticipated Litigation- pursuant to Government Code Section 54956.9

Title: Closed Session: Conference with Legal Counsel

5. CALL REGULAR MEETING BACK TO ORDER

6. REPORT FROM CLOSED SESSION – (Announce any action taken or direction given and the vote thereon)

7. SPECIAL PRESENTATIONS AND ANNOUNCEMENTS

8. PUBLIC COMMENT

Regular City Council meetings are posted on the City's website to keep City residents informed of City Council actions and deliberations that affect the community. Meetings are scheduled to be televised on the 1st and 3rd Thursday of each month. Meetings that take place on dates other than the 1st and 3rd Thursday will not be televised.

This time is set aside for citizens to address the City Council on matters listed on the Consent Agenda as well as other items **not** included on the Regular Agenda. If your comments concern an item noted on the Regular Agenda, please address the Council when that item is open for public comment. **Each speaker is allocated three (3) minutes to speak. Speakers may not cede their time to another speaker.** Comments should be limited to matters within the jurisdiction of the City. Speaker forms are available from the City Clerk, 5915 Dunsmuir Ave, Dunsmuir, on the City's website, or on the podium. The City Council can only take action on matters that are on the Agenda, but may place matters brought to their attention at this meeting on a future Agenda for consideration. If you have documents to present to members of the City Council, please provide a minimum of seven (7) copies.

9. COUNCIL AND STAFF COMMENTS

10. COMMITTEE REPORTS

11. APROVAL OF MINUTES: September 3rd, 2020

12. CONSENT AGENDA:

a. Check Register: 8/29-9/11/2020

13. PUBLIC HEARING: None

Public Hearing Protocol:

- a. Mayor will describe the purpose of the Public Hearing.
- b. City Staff will provide the Staff Report.
- c. City Staff will respond to questions from the City Council.
- d. Mayor will open the Public Hearing.
- e. Citizens wanting to comment will come to the podium, provide the City Clerk with their name and address and provide their comments.
- f. Mayor will close the Public Hearing.

14. OLD BUSINESS

- A. Revised draft Solid Waste RFP

15. NEW BUSINESS

- A. Resolution 2020-19 of the Dunsmuir City Council recognizing the exemplary service of Sheriff Jon Lopey
- B. Decision on whether to support a resolution of the General Assembly of the League of California Cities calling for an amendment to require social media companies to remove material which promote criminal activities.

16. FUTURE AGENDA ITEMS

Future Agenda Items are topics brought to the City Council for review and/or action. All dates refer to first introductions and can be altered due to time and priority levels.

17. ADJOURNMENT

Copies of this agenda were posted at City Hall, Dunsmuir City Library, Dunsmuir Park and Recreation District Office and at the Dunsmuir Post Office on or before 5:30 PM SEPTEMBER 14th, 2020.

The City of Dunsmuir does not discriminate on the basis of race, color, national origin, religion, age, gender, sexual orientation, disability or any other legally protected classes in employment or provision of services. Persons who need accommodations for a disability at a public meeting may call City Hall at (530) 235-4822 for assistance. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to accommodate participation in the meeting.

CERTIFICATION

This is the official Dunsmuir City Council Agenda, created and posted in accordance with the Dunsmuir City Council Protocols.

Deputy City Clerk
Wendy Perkins

Date

DUNSMUIR CITY COUNCIL
Minutes
September 3rd, 2020

1. CALL TO ORDER AND FLAG SALUTE

Meeting was called to order by Mayor Lucchesi at 6:05 pm.

2. ROLL CALL

Councilmembers present: Arth, Bryan, Deutsch, Keisler, Lucchesi

Councilmembers absent: None

Staff present: CM Juhasz, Deputy City Clerk Perkins, FD Michaelson,

3. SPECIAL PRESENTATIONS AND ANNOUNCEMENTS

4. PUBLIC COMMENT – Letter is read by Mayor Lucchesi, from Karen Roberts. Shasta Retreat has many hikers going through to Mossbrae Falls, concern about folks not social distancing, creating trash and no bathrooms available. Folks relieving themselves outdoors in their neighborhood. There is a person living under bridge there in Shasta Retreat. Graffiti – problem there was taken care of by a resident.

Dena Marlatt – Concern about general sales tax. Because of Prop 218 this tax increase, it must go to voters to pass this sales tax measure. Per the FPCC City Council may not expend any city resources to advocate for/against the ballot measure. City Council may not advocate for or against the ballot measure. Deutsch represented himself as a council member at the Chamber of Commerce to endorse measure H. Said Council authorized him to endorse (to the chamber) for their support of the tax measure. Would like to bring this issue to attention of Council and Staff and warn them of possible legal ramifications.

5. COUNCIL AND STAFF COMMENTS

Ben Whetstine – Reporting on July stats. 530 patrol hours. 201 calls for service. 37 traffic stops. 16 citations, 11 arrests. 3 felony bookings. 16 misdemeanor bookings. Felony warrant arrest for heroin on Sac. Ave. Heroin and Meth Misdemeanor on Dunsmuir Ave. Public intoxication at Tauhindauli. Felony commercial burglary @ Penny's diner. Assault on a firefighter.

Arth - asks if these are locals? Is rate of meth use rising?

Whetstine – Some are yes. We have them frequently with locals. Fist size ball of meth seized was discovered on a local man. Perhaps a slight uptick. Notices heroin use is on a comeback.

CM- Juhasz – The state is expanding Covid-19 hardship declaration. There will be no more evictions for non-payment of rent. Eviction protection until February 1st, 2021, partial rent payments after that.

FAA grant is in. We have a date of construction to start on the airport construction of 9/21, likely completed by end of October. Bids will be open for water project as of tomorrow, 9/4.

Arth – wants to start rehearsing how trash and bathroom issues will be solved once Mossbrae falls trail opens. All of us are hopeful that the Mossbrae trail will be completed in 2021. Also wants to express concern about allowing members of the community to participate in the zoom meetings. Wants to perhaps allow members of public to speak longer than 3 minutes. How can we express gratitude to Sheriff Lopey? Perhaps we can pen a resolution to honor him. Offers to write the resolution.

Keisler – Thanks Steve Bryan putting on the Disaster Preparedness meeting.

Bryan – Thanks staff on how far we’ve come on code enforcement. Takes a long time to develop a program to make sure citizens conform to the law. We have cleaner more orderly streets regarding inoperable vehicles. South Dunsmuir now has a lot of towed vehicles being towed there after they have received citations within City limits.

Deutsch – Wants to reply to comment about his involvement at the Chamber advocating Measure H. He is recognized as an unofficial non-voting member of the Chamber. He states he did not propose someone vote one way or the other.

Lucchesi – Discusses prepping for LOCC meeting.

6. COMMITTEE REPORTS - None

7. APROVAL OF MINUTES: August 27th, 2020

The following amendments shall be made:

Two items – asked that it be added that we note Council meeting of 8/27 be held in honor of Alleva Graham, who recently passed and lived to be almost 100 years old. Was a big part of preserving Dunsmuir’s Railroad History.

Page 4 of agenda, item 6. Chairman Bryan and him reporting on finance committee.

Airport fund deficit can be moved to general fund. Redact that. Change to: Finance committee voted to recommend to full city council 20k in care act funding, that is coming to airport enterprise fund be moved over to pay the debt of general fund.

Further edits to minutes of 8/27:

At the end of comments by chairman Bryan, change any and all instances of “reccos” to recommendations.

Motion to approve Consent Agenda as amended by Keisler 2ND by Arth

Roll Call Vote: AYES: Arth, Deutsch, Keisler, Lucchesi, Bryan

NOES: None

ABSENT: Lucchesi

ABSTAIN: Bryan 5-0-0-0

8. CONSENT AGENDA:

A. Check Register: 8/22 – 8/28/2020

B. Council Memo – regarding Traveler’s Hotel Project

Talk about moving item B off of the consent agenda. Regarding ord. 557.

Arth – Where can we rejoin the parking issue?

Lucchesi – Make a note to discuss on future agenda.

Motion to move item B off consent agenda? No 2nd vote to remove it.

Motion to approve Consent Agenda as is by Keisler 2ND by Deutsch

Roll Call Vote: AYES: Arth, Deutsch, Keisler, Lucchesi, Bryan
NOES: None
ABSENT: None
ABSTAIN: None 5-0-0-0

9. PUBLIC HEARING:

A. Second reading for 2019/2020 CDBG Application

Approve revamp of EDBG program to allow micro-enterprise low/no interest loans and up to \$20k grants for qualifying small businesses and approve resolution 2020-18 authorizing City Manager to apply for CDBG Grant.

CM Juhasz – introduces the application process for EDBG funds for microenterprise or small grants/ traditional economic development block grant small business loans.

Bryan – Greater flexibility in old program. Can you share how?

CM Juhasz – with micro enterprise assistance cap is 500K. Cap on traditional small business loan is \$750,000. Moot point though because as Dunsmuir, we only qualify for \$500,000.

Micro-enterprise route is easier because there aren't the job creation requirements as there is with the small business loans. Folks who qualify are low to moderate income. Staff's observation that there will be more flexibility, quicker approval times, less red tape for approval if we go micro-enterprise route.

Lucchesi – explains that 9.a. and 10 a. are same item and shall be combined.

Juhasz – small business loans. You have to confirm monthly that you still have same number of employees. Adhering to all these requirements, it is onerous to report on. The microenterprise method works better for us, especially in light of Covid.

Bryan – How does admin fee work?

Juhasz – We submit with the grant, subrecipient agreements, we can use administrative funds up to 17% but the folks that we are contracting with won't be using that full amount of money.

Bryan – Where can I see those monies split up in the future?

Juhasz – Once loans come in, the sub recipient agreement will come from the state, it will approve the sub recipient agreement to work with the vendor.

Bryan – Because we are lead agency how does admin cost work?

Do we get up to 17% administrative costs?

Juhasz- states we would not use the full 17% for administrative costs.

Juhasz – Admin fee applies across the board, no matter the municipality.

Public comment opened at 6:49 p.m. – None. Closed @ 6:50 p.m.

Arth – Do we have a functioning Economic Development Committee?

Lucchesi – We do not. We only have one member of council who works with staff on this.

Bryan – They meet very infrequently. He's on the loan committee.

Arth – Thinks Finance Committee has been a success. City needs to organize so that we hear from chamber on whatever monies we're asking for, we want to have an economic development plan so that it makes it more persuasive when we're asking for monies. Wants Economic Development Committee and a Loan Committee.

Motion to approve Resolution 2020-18 a Resolution by the City County of the City of Dunsmuir authorizing City Manager to apply for the 2019-2020 Community Development Block Grant, NOFA Dated January 21,2020 by title and name only by Deutsch 2nd by Bryan

Roll Call Vote: AYES: Arth, Deutsch, Keisler, Lucchesi, Bryan
NOES: None
ABSENT: None
ABSTAIN: None 5-0-0-0

Motion by Keisler to move City of Dunsmuir loan system from the traditional EDBG based business assistance loans to the micro- enterprise loans and grants for small business, 2nd by Lucchesi.

Roll Call Vote: AYES: Arth, Deutsch, Keisler, Lucchesi, Bryan
NOES: None
ABSENT: None
ABSTAIN: None 5-0-0-0

11. NEW BUSINESS

A. Resolution Encouraging the Wearing of Face Masks

CM Juhasz – Same as last time. We’re in a pandemic. Limited amount of transmission occurs outdoors. Transmission primarily occurs indoors. We’re putting resolution forward strongly encouraging folks to wear masks at indoor locations.

Discussion regarding whether the governor will remove emergency order prior to vaccine roll out.

Public comment opened at 7:08 p.m. No comments. Public comment closed at 7:09 p.m.

Motion to adopt Resolution 2020-15 encouraging use of face coverings indoors by Deutsch 2nd Keisler.

Roll Call Vote: AYES: Arth, Deutsch, Keisler, Lucchesi, Bryan
NOES: None
ABSENT: None
ABSTAIN: None 5-0-0-0

B. Enforcement of Abandoned and Distressed Buildings Ordinance

CM Juhasz introduces the item and gives background. It’s hard if your force people to pay a fee when they register, when they can’t get new businesses in or sell because of the pandemic. Was asked during a prior council meeting to postpone the item until later down the line. Attorney has advised to avoid enforcing it in these tough economic times, since folks won’t be in position to start new businesses.

Arth – We adopted this ordinance earlier in the year. City of Weed has had success in moving buildings that are abandoned and falling apart to the Supreme Court to enforce and prevent deteriorating condition. Downtown buildings need paint and

glass. Doesn't see why being in the "orange zone" of pandemic should prevent us from enforcement now.

Public comment opened at: 7:17 p.m. No comment. Public Comment Closed at 7:18 p.m.

Discussion:

Lucchesi – Is not totally comfortable with vacant building ordinances. Understands if there is a public health hazard, but at this point, does not want enforcement against things like peeling paint. Would rather see list of properties, would like to see them given information on how to apply for CDBG loans. Does not feel comfortable enforcing at this point. She does want them to find financial resources. CM Juhasz – Concern is, in this environment, if we start enforcing it, it would be construed as the taking of property. If folks can't sell their buildings or get tenants due to this current financial climate, this seems unfair to enact when folks are in this tight financial position.

Keisler – We aren't trying to isolate one person. It has to be safe in town. Building can't be in danger of falling apart on passers-byers.

CM Juhasz – Concerned that it could be construed as we're taking their property when businesses are in a vulnerable economic position. This can put us in potential legal trouble as it can be misconstrued the wrong way if we enforce it at this difficult economic time.

Bryan – Suggests separating abandoned category vs. distressed. City Manager can give them a reasonable time frame before fees ratchet up. Can we do a middle ground approach?

Juhasz – If there are health and safety violations, it may be feasible to go after places where there are cross connection control requirements, for example.

Motion to revisit this issue in two weeks by Keisler 2nd by Arth

Roll Call Vote: AYES: Arth, Deutsch, Keisler
NOES: Lucchesi, Bryan
ABSENT: None
ABSTAIN: None 3-2-0-0

C. Children's Park Project

CM Juhasz – we have prop 68 park funding to tune of 77K. We're looking at moving children's park from location it is in. Met with playground vendor out on site. We can't purchase for more than appraised value. Current landowner likely will not sell it for what appraisal comes in for. The other option is to tear out the current structures, and move park, and have almost same amount of space and get ADA accessible equipment. We can maybe swap a City Owned property of equal worth with the current landowner. Then we would keep playground where it is, and still update the playground equipment with new stuff.

Deutsch- Thought years ago we made an adjustment to boundary line?

Juhasz – When lease was drawn up, it looks like we are renting children’s park from property owner, but we actually own a portion of the property for which we are renting. We can take what shows on survey, the vacated street and half of playground, demo playground, demo asphalt that is now a vacant street and layout playground surface and basketball court and we would just move it about 60 feet south.

Keisler – Seems there are 3 property owners, Juarez – gas station, Benson – roofing co, City of Dunsmuir owns “Spruce St”. If everything to South is Juarez, everything east is Mr. Benson correct?

Juhasz – sort of. We have enough space between Benson’s and Hicks property and the vacated street that we own, we can have a playground and green space that we could own completely.

Deutsch – really remembers a boundary line split that may have happened years ago. Can we go back and look at the minutes?

Juhasz – We own enough property to forego any underlying lease and just get the playground under our ownership outright, no other owners of the playground, just City of Dunsmuir.

Bryan – Would we use most of the \$177K?

CM Juhasz - Say we buy the land for what it appraises for say \$70k. As long as playground structure rebuild is under 100K we would be covered. We may have some left over to allocate elsewhere.

Public comment: None

12. FUTURE AGENDA ITEMS

Downtown Parking issue – Could refer this to planning commission. May be better to refer it to them but we may not have it in Rico’s budget for him to address

Code Review – Possible committee

Item for recognizing Lopey

Adding a citizen member to finance committee? No decision to add to future agenda now.

May need to address at FC meeting.

13. ADJOURNMENT

Motion to Adjourn by Deutsch 2nd by Lucchesi

Meeting was adjourned at 7:55 p.m. by Consensus.

Mayor Lucchesi

Wendy Perkins, Deputy City Clerk

Date

Check Register Report

check register 8/29-9/11

Date: 09/11/2020

Time: 9:15 am

Page: 1

City of Dunsmuir

BANK: U.S. BANK

Check Number	Check Date	Status	Void/Stop Date	Reconcile Date	Vendor Number	Vendor Name	Check Description	Amount
U.S. BANK Checks								
54232	09/04/2020	Printed			1225	ACME COMPUTER	closed account final payment	692.07
54233	09/04/2020	Printed			2635	BASIC LABORATORY, INC.	drinking water weekly	33.60
54234	09/04/2020	Printed			5325	REBECCA CATLETT	cleaning Aug2020	379.50
54235	09/04/2020	Printed			9225	DMV	taxes for Fire vin2804	3,255.00
54236	09/04/2020	Printed			9850	DUNSMUIR TRUE VALUE	August 2020	788.13
54237	09/04/2020	Printed			9850	DUNSMUIR TRUE VALUE	hex key for fire dep	25.19
54238	09/04/2020	Printed			9303	FASTENAL COMPANY	Orange, grape RTD	205.95
54239	09/04/2020	Printed			5219	FERGUSON ENTERPRISES INC,1423	Sisk ave back flow inst parts	144.15
54240	09/04/2020	Printed			17013	GOLD NUGGET PRINTING CO.	#10Regular envelopes	714.74
54241	09/04/2020	Printed			10657	GRIMM, GREG	grade III, August2020	2,804.00
54242	09/04/2020	Printed			22145	INTERSTATE SALES	ped crossing, reduce speed	166.09
54243	09/04/2020	Printed			7260	L.N. CURTIS AND SONS, INC	ac/dc charger,drip torch	570.53
54244	09/04/2020	Printed			9870	MT SHASTA AREA NEWSPAPERS	L8775 Ordin 568	61.25
54245	09/04/2020	Printed			9870	MT SHASTA AREA NEWSPAPERS	backflowL8783, abatement L8784	292.50
54246	09/04/2020	Printed			9201	O'REILLY AUTO PARTS	Alternator, core charge	156.40
54247	09/04/2020	Printed			39015	PACIFIC POWER	power August 2020	6,434.42
54248	09/04/2020	Printed			39015	PACIFIC POWER	river ave lift station power	87.88
54249	09/04/2020	Printed			10676	PERUZZI, JEAN	refund closed act24597	69.26
54250	09/04/2020	Printed			47520	SHASTA AUTO SUPPLY	whl kit,carwash sup F.D.	93.78
54251	09/04/2020	Printed			47653	SISKIYOU CO. CLERKS OFFICE	CEQA NOE sewer proj	50.00
54252	09/04/2020	Printed			47676	SMITH BUILDING SERVICES, LLC	building services, plan check	1,970.08
54253	09/04/2020	Printed			48255	SOUSA READY MIX, LLC.	popcorn slurry, simpson meeter	2,093.52
54254	09/04/2020	Printed			53810	US BANK EQUIPMENT FINANCE	Printers copies Aug2020	914.20
54255	09/04/2020	Printed			53806	USA BLUE BOOK, INC	kimiwips, tubes, run tee	182.71
54256	09/04/2020	Printed			50850	VERIZON WIRELESS	ww, cod, pw phone	131.36
54257	09/04/2020	Printed			50850	VERIZON WIRELESS	F.D. Phone/lpads/hotspot	155.73
54258	09/04/2020	Printed			60005	YREKA TRANSFER COMPANY	4200 Sac. Dump drop box	813.27
54259	09/11/2020	Printed			9277	A CUT ABOVE TREE SERVICE, INC	Y tree on wood street	1,500.00
54260	09/11/2020	Printed			514	ADVANCED INFOSYSTEMS	Sep. Billing 2020	383.07
54261	09/11/2020	Printed			3572	ANTHEM BLUE CROSS	Oct. 2020 Life insurance	243.92
54262	09/11/2020	Printed			1910	AT&T	wwtp 530 235-0850 Aug2020	42.83
54263	09/11/2020	Printed			2635	BASIC LABORATORY, INC.	drinking water weekly	243.60
54265	09/11/2020	Printed			9820	CITY OF DUNSMUIR	wtr dep retnr Gilmore 2096	3,215.00
54266	09/11/2020	Printed			9820	CITY OF DUNSMUIR	I-5 lift station act250800S	40.00
54267	09/11/2020	Printed			9820	CITY OF DUNSMUIR	shasta retreat lift 304415 Sep	40.00
54268	09/11/2020	Printed			9820	CITY OF DUNSMUIR	SDSA pump Sep2020	40.00
54269	09/11/2020	Printed			9820	CITY OF DUNSMUIR	elizabeth/Duns ave 25665	40.00
54270	09/11/2020	Printed			9820	CITY OF DUNSMUIR	treatment plant lift 354077	320.00
54271	09/11/2020	Printed			6325	CLEMENS WASTE REMOVAL	weight dump fees Aug2020	7,208.44
54272	09/11/2020	Printed			9303	FASTENAL COMPANY	coppertop battery	404.37
54273	09/11/2020	Printed			47610	FISCHER'S SISKIYOU	hedge creek toilet service Aug	201.25
54274	09/11/2020	Printed			10561	LAWSON PRODUCTS, INC	air coupler, magic monkey etc	424.78
54275	09/11/2020	Printed			31212	MANFREDI'S DEPOT	gas Aug 2020	310.18
54276	09/11/2020	Printed			33146	MT SHASTA SPRING WATER CO	1 gal D/W case	85.45
54277	09/11/2020	Printed			10650	MT. SHASTA IT SERVICES, INC	monthly IT services	1,200.00
54278	09/11/2020	Printed			39005	PACE ENGINEERING, INC.	water main repacement proj.	160,779.75
54279	09/11/2020	Printed			47669	SISKIYOU OPPORTUNITY CENTER	blue bag program Aug2020	566.38
54280	09/11/2020	Printed			53806	USA BLUE BOOK, INC	1/4"tube, branch tee	27.96

Total Checks: 48

Checks Total (excluding void checks):

200,602.29

Check Register Report

check register 8/29-9/11

Date: 09/11/2020

Time: 9:15 am

Page: 2

City of Dunsmuir

BANK: U.S. BANK

Check Number	Check Date	Status	Void/Stop Date	Reconcile Date	Vendor Number	Vendor Name	Check Description	Amount
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Total Payments: 48

Bank Total (excluding void checks): 200,602.29

Total Payments: 48

Grand Total (excluding void checks): 200,602.29

REQUEST FOR PROPOSALS

SOLID WASTE HANDLING SERVICES

Proposals Due by _____, 2020

Submit Proposals to:

City of Dunsmuir
Deputy City Clerk
Re: Solid Waste Handling Services
5915 Dunsmuir Avenue
Dunsmuir, CA 96025

City of Dunsmuir
Finance Department
(530) 235-4822 Ext. 105



PRELIMINARY STATEMENT

The City of Dunsmuir ("City") is requesting proposals for its solid waste handling services within its City limits. Currently the City has an agreement with Clemens Waste Hauling Inc. which collects solid waste for its commercial and residential premises. This Request for Proposals ("RFP") is for both the City's residential and commercial solid waste handling services to be awarded to a single waste hauler under a single solid waste franchise agreement.

The City's RFP Schedule is shown below in Table 1. The City reserves the right to change the listed dates at any time. Proposals must meet the submission rules set forth in this RFP.

Table 1: RFP Schedule

DATE	ACTIVITY
August 6, 2020	City Council meeting authorizing RFP to be published
TBD	Request for Proposals available
TBD	Proposal Due
TBD	Target Date for Award
July 1, 2021	Start of Collection Solid Waste Services.

SECTION 1
INTRODUCTION

1.1 **RFP Summary**

The City of Dunsmuir ("City") is requesting proposals for the collection of solid waste within its City limits. This RFP packet is intended to provide interested solid waste enterprises ("Proposers" or individually, "Proposer") with instructions as they prepare their proposals for submission to the City. The City intends to enter into a single franchise agreement (the "New Franchise") with a single Proposer for both residential and commercial solid waste handling services.

Currently, Clemens Waste Hauling, Inc., (CWH) provides collection services for both residential and commercial premises.

(a) **New Franchise Term**

The City's current residential franchise agreement with CWH expires on June 30, 2021. Thus, the successful Proposer shall commence collection services for residential premises within the City limits on July 1st, 2021.

The approximate term of the New Franchise will be for approximately seven (7) years, with the City Council having three (3) options to extend the term for an additional one (1) year period such that if all three (3) options are exercised, the term would expire on July 31, 2031.

(b) **RFP Overview**

This RFP packet includes a description of the current services provided by Clemens Waste Hauling Inc. as compared to services under the New Franchise. Because the City currently bills for waste hauling services, it has detailed and corresponding data on the solid waste handling services. Proposers are responsible for reading and responding to all the requirements set forth more fully in the Draft Agreement. Section III details the submission requirements that Proposers should adhere to when submitting their respective proposals.

1.2 **Communications During the RFP**

From and after the date that the City Council authorizes the release of the RFP through the time the City Council awards the New Franchise, all communication between the City and Proposers shall be directed through Blake Michaelsen, Project Manager for the City, (530) 235-4822 ext. 105, or bmichaelsen@ci.dunsmuir.ca.us Any ex parte contact between the Proposers and any City officials, employees (excluding the Project Manager), and representatives, including, but not limited to the City Council members and/or the City Manager, during the above stated period may subject the Proposer to disqualification.

Any questions regarding this RFP shall be made in writing and directed to the Project Manager. Answers to questions shall be made via e-mail and shared with all Proposers registered with the City as a prospective Proposer. A list of questions and corresponding answers shall also be posted and periodically updated on the City's website at <http://www.ci.dunsmuir.ca.us> as soon as feasibly possible.

All questions regarding the RFP and/or Draft Agreement must be submitted by September 15, 2020.

1.3 Submission of Proposals

Proposers must deliver their completed proposals to the City Clerk in a sealed package such that they are received and time stamped by the City Clerk on or before 4:00 p.m., October 15, 2020, in order to have their proposal considered by the City. It is the individual Proposer's responsibility to ensure that their completed proposals are received by 4:00 p.m. of the due date. Proposals received after 4:00 p.m. will not be considered.

All proposals shall include a cover page, transmittal letter, Proposer's representative or contact person, corresponding contact information, and a table of contents with corresponding page numbers. All proposal pages should be numbered for easy reference and sections and exhibits should be designated with a number/letter and tabbed. **Attachment 3** provides a reference for what, at a minimum, should be included in the table of contents and the corresponding order.

The Proposals shall contain all the required exhibits as set forth in this RFP. Exhibits shall be clearly identified to allow the City to determine the contents therein.

Submitted proposal responses shall remain valid for at least one hundred eighty (180) days.

All submitted proposals must include five (5) hardcopies of the Proposer's complete proposal, At least one (1) of the hardcopies must be unbound and photocopy ready.

The sealed package must be addressed as follows:

ATTN: CITY CLERK
[Proposer's name] RESPONSE TO
CITY OF DUNSMUIR'S SOLID WASTE RFP
5915 Dunsmuir Avenue,
Dunsmuir, CA 96025
(530) 235-4822

1.4 Minimum Requirements

A Proposer must have a minimum of five (5) years of experience serving residential and/or commercial accounts in the solid waste industry in order to submit a proposal. Said five (5) years of experience is not limited to contracts with a municipal entity.

SECTION II
DESCRIPTION OF CURRENT CONDITIONS AND SERVICES UNDER NEW
FRANCHISE

2.1 Comparison of Existing Service Versus New Franchise Services

This section attempts to provide a summary of the existing solid waste services the City has with its current hauler. Where applicable, this section also explains whether services under the New Franchise will remain the same or will differ under the New Franchise. ***However, the information below is not intended to be comprehensive and Proposers should consult the Draft Agreement for a complete description of the terms under the New Franchise.***

2.2 Description of Service Area

The City of Dunsmuir, located in Siskiyou County, encompasses approximately 1.6 square miles. The City of Dunsmuir, as of 2018, consists of 1600 residents and does not project to have any increase in population over the next 10 years. The City has 1,597 residential parcels and 472 commercial parcels. Approximately 85% of these parcels are developed. The City has not seen significant development in the past 5 years of either residential or commercial development, therefore, we don't anticipate a significant increase in residential or commercial solid waste customers.

2.3 Current Solid Waste Service Contracts

The City currently has a solid waste agreement for its residential and commercial premises. CWH provides collection services for residential premises and for commercial premises. CWH's agreement with the City expires on July 31, 2021. The billing for their services is based on a per can or bin as well as on a frequency of collection basis.

2.4 Current Service Data

As stated in Section 1.1(b) of this RFP, the City has compiled its billing data, tipping data, and the service information shown in **Attachment 1**.

2.5 Current Services Provided for Residential Premises

(a) Residential Collection

The current rates are based on a per can charge with a minimum of one can required for all residential users with collection occurring once per week. Recycling is done once a week along with solid waste collection services. Sorting of the recycling material is done by the Siskiyou Opportunity Center (SOC) which also determines what types of recycling material are allowed.

(i) Refuse Collection

Customers refuse is collected using cans supplied by the provider, currently this includes either 65 or 95-gallon cans that have a lid. Each additional can is supplied by the provider. The City pays the tipping fee to the Black Butte Transfer Station. The transfer station is closed on Thursdays and Sundays and the Proposer would not be expected to provide service on those days. The next closest transfer station is in Yreka, California.

Under the New Franchise, the successful Proposer shall provide either a proposal for continued per can collection or preferably an automated refuse collection service. The cost for collection carts can be negotiated as to who is responsible for that cost. The City realizes that cart sizes vary by manufacturer type, specification, and by equipment used for hauling. It also realizes that the estimated size may vary due to the customers' needs given the current number of cans used. Tipping fees would be paid by the Proposer. The current tipping fees are included in Attachment 1.

Under the New Franchise, the route schedule for residential premises can be determined by the proposer or remain the same to meet the needs of the Proposer. The current route information is attached to the RFP and is listed as Attachment 1.

(ii) Recycling Collection

Customers receive collection services for recyclables on the same day as refuse collection, and is performed once a week. There is no additional cost for this service. The recycling is collected by CWH and delivered to the Siskiyou Opportunity Center (SOC) for processing. The City pays the SOC for the processing and sorting of the recycling products.

Under the New Franchise, the successful Proposer shall provide, at a charge to be determined, residential recycling to all current residential customers using the current system or an automated recycling collection service. The determination between source separated or mixed waste recycling has not occurred.

The City realizes that the development of this program will take time and effort. Also, cart sizes vary by manufacturer type, specification, and customer need for this program are currently unknown. The frequency of collection should not be less than once per month but may vary and is subject to study and negotiation.

(iii) Green Waste and Food Waste Composting Collection

We currently do not have a green waste or food waste composting program.

Under the New Franchise, the successful Proposer shall, with the City's cooperation, develop a green waste and restaurant food waste compost removal program. It is preferable that this service be automated. Again, cart size will vary as this program is new and will need to be studied and negotiated into the future. The Proposer will be expected to participate in the development of this program.

(b) City-Wide Clean Up Events

Currently, we do not provide "City Wide Clean Up Events."

Under the New Franchise, the successful Proposer shall conduct at least one Bulky Item and Solid Waste Drop-Off events (clean-up day) per year at no additional cost to the City. See Section 8.7.7 of the Draft Agreement for additional event requirements.

(c) City Service Calls

We currently do not require CWH to pick up bulky items discarded on or along the City's right of ways, open spaces, or other City property.

Under the New Franchise, the successful Proposer shall develop a program for the pickup of bulky items and other solid waste as a result of illegal or unauthorized dumping or other code enforcement matters, occurring within the City. The Proposer shall perform this service within forty-eight (48) hours from when the City makes its request. The payment for this service should be included in the proposal.

(d) Bulky Items

We currently do not collect bulky items.

Under the New Franchise, residential customers at single family dwellings receive free bulky item pick-up during the once per year City Wide clean-up effort. This event will be held in conjunction with the Siskiyou County Regional Agency as they provide support to the Black Butte Transfer Station when these events are scheduled.

(e) Billing and Fees

The City currently handles the billing for residential customers on a monthly basis. See **Attachment 1** for current rates and unit counts.

Under the New Franchise, the successful Proposer shall handle the billing and the franchise fee will be equal to four (4%) percent of the annual gross receipts. If the Proposer uses an automated system, the calculation of fees for this service shall use a volume of new container as well as the number of in-service cans to determine the fee for service.

2.6 Current Services Provided for Commercial Premises

(a) Commercial Collection

(i) Refuse Collection

CWH collects refuse at least once a week from commercial customers, including customers at multi-family dwelling units with five (5) or more units. The contractor provides the containers, for a charge, and the containers are subject to approval by the contractor due to the constraints of CWH equipment. The contractor is responsible for maintaining the containers, including cleaning, painting, removing graffiti, etc. from the containers.

Under the New Franchise, the successful Proposer shall provide commercial premises with the bin(s) needed for the collection of mixed solid waste and may charge rates for such service

depending on the size of the container and frequency of collection. The Proposer may charge for the rental of their provided bins or may sell bins to the customer. The Proposal shall specify the type and size of containers that will meet their equipment handling needs

Commercial customers shall also have the option to have a cart instead of a bin to accommodate space constraints or for premises that do not generate enough waste to require the use of a bin. The successful Proposer is also responsible for maintaining the containers, including the removal of graffiti.

(ii) Recycling Collection

SOC collects commercial recycling for Commercial services, bins are purchased or rented from CWH. There is currently no charge to Commercial customers for recycling collection.

Proposers have the option under the New Franchise to propose either a mixed waste or source separated commercial recycling program. Proposers submitting a source separated commercial recycling program may charge rates for the source separated service. If Proposer's commercial recycling program consists of mixed waste processing, the Proposer may charge for that service as well. Neither rate for commercial recycling has been determined.

(iii) Green Waste and Restaurant Food Waste Compost Collection

We currently do not have a green waste or restaurant food waste composting program.

Under the new Franchise, the successful proposer shall, with the City's cooperation develop a green waste and restaurant food waste composting program, preferably automated. Bin or cart size will vary as amounts will vary at commercial locations. As this will be a new program, study and rate negotiation will be necessary.

(b) Billing and Fees

Currently the City bills commercial customers monthly based on the frequency and number of bins.

See **Attachment 1** for the current commercial rates and unit counts.

Under the New Franchise, the franchise fee will be equal to four (4%) percent of the annual gross receipts. A fee for recycling collection will need to be developed for this proposal. Fees for services not currently provided will need to be determined when the service is developed.

2.7 Other Services

(a) Bulky Items

We do not currently have a bulky item service pickup.

Under the New Franchise, bulky item collection for commercial premises will occur via an on-call basis and the successful Proposer may charge for such services. In addition, as noted above, the successful Proposer shall also, pick up bulky items and other solid waste as a result

of illegal or unauthorized dumping, or other code enforcement matters, occurring within the City.

(b) Holiday Tree Collection

The current contractor does not provide holiday tree collection services.

Under the New Franchise, the successful Proposer shall pick up holiday trees for at least two weeks following December 25th of each year.

(c) City Sponsored Events

The current contractor does not provide service for bins, pick-up and disposal post City sponsored events.

The New Franchise will require, upon request, that the successful Proposer provide solid waste handling services, at no additional charge, for City sponsored events. A sample of City sponsored events is included in this RFP as **Attachment 1-D**. **Attachment 1-D** is provided by way of example and is not meant to be exhaustive. The number, type and service requirements for these events may vary from year to year.

SECTION III
DETAILED SUBMISSION REQUIREMENTS

3.I Exhibits

Proposers must submit the following documents as exhibits/sections attached to their proposals. Each exhibit must be clearly labeled as set forth below.

(a) Exhibit 1: Rate Schedule, Supporting Cost and Operating Data

Proposer shall fill in the applicable rate schedule and supporting cost and operating data worksheets provided in **Attachment 4**. The City reserves the right to rebalance rates prior to contract execution if the change is revenue neutral to the Proposer. If the Proposer is using an automated system, rates will need to be recalculated using a volume projection from the number of cans to the new bin or cart. The current rates are included in **Exhibit A** of the Draft Agreement.

The supporting cost and operating data worksheets in **Attachment 4** provide a format for

Proposers to estimate their annual revenue requirement for providing all of the proposed services. The operating statistics will be used to evaluate the reasonableness of the Proposer's estimated revenue requirement and proposed compensation. **Attachment 4-J** demonstrates how the Proposer plans to reach required diversion levels. Note that diversion programs put forth in **Attachment 4-J**, and elsewhere in Proposer's proposal, may be incorporated into the final franchise agreement. Based on data provided to CalRecycle, the City's targeted diversion rate based on population is 4.1 pounds per person per day and based on employment is 13.3 pounds per person per day. The Regional Agency Diversion Goal is 30%.

A proposal may be deemed nonconforming or incomplete unless Attachment 4 is complete and submitted in its entirety to the best of the Proposers ability.

(b) Exhibit 2: Exceptions to Draft Agreement Terms

Any and all exceptions to the terms set forth in the Draft Agreement shall be made in writing, included with the proposal and marked separately as Exhibit 2. To the extent the exceptions conflict with, modify, or otherwise change a term in the Draft Agreement, the proposal shall reference the Section of the Draft Agreement to which the exception relates. To allow full consideration of any exceptions, a proposal shall provide as much detail regarding the proposed exceptions, including, where appropriate substitute contract language being proposed.

Unless an exception is provided in writing, by submitting a proposal, Proposer accepts the terms set forth in the Draft Agreement. ***It is intended, that the successful Proposer will enter into a solid waste agreement with the City, subject only to exceptions raised by the Proposer.*** Only exceptions noted in the proposal shall be considered by the City. The City is not required to accept any submitted exception, but can choose to negotiate regarding the subject matter of said exception in order to arrive at a mutually agreeable contract provision. Proposers should anticipate that because of the newness and additional services to be provided by this program the City will be willing to accept changes to the Draft Agreement language.

(c) Exhibit 3: Proposer Business Information

(i) General Information

Proposer shall provide the following information:

- Proposer's legal entity name;
- the Proposer's legal entity status (e.g., whether Proposer is a corporation, an individual, limited liability corporation, partnership, subsidiary, et al.);
- in certain circumstances, the City may seek a corporate or personal guaranty from the successful Proposer, where appropriate. If Proposer provides a financial statement for an entity other than Proposer (e.g., a parent company), Proposer shall indicate that the other entity's legal relationship to the Proposer and that entity's willingness to sign a corporate guaranty in a format provided in **Attachment 6**. Proposers are advised that if a personal guaranty is required, it shall be in substantially the same format as set forth in **Attachment 7**;
- the names of Proposer's shareholders that hold at least a 5% interest in the legal entity;

- the names of the entity's officers;
- the identification of creditors or potential creditors who are owed or may be owed debt that is more than 5% of the entity's total assets;
- the number of years that the Proposer's legal entity has been in business under the provided legal structure; and
- where Proposer's corporate and local headquarters (if different) are located.

(ii) Legal Actions

Proposer shall provide a list of any prior (within the last ten (10) years) or current material legal actions for which Proposer or its parent or affiliated company, where applicable, was or is a named party. This list shall include the case name, case number and the final disposition (if any). "Material legal actions" for the purposes of this section means any litigation (e.g., a proceeding where a complaint was filed) or regulatory proceeding (e.g., a proceeding where an accusation was filed) brought by an entity regarding the collection, disposal, or processing of solid waste. "Material legal actions" shall also include any litigation initiated by an entity alleging Proposer's noncompliance and/or breach of an agreement for solid waste handling services. Proposer shall also provide a list of any violation notices issued by a regulatory agency (within the last ten (10) years) regarding the collection, disposal, or processing of solid waste.

(iii) Financial Statements

The Proposer shall supply the City with a copy of its most recent financial statements. The financial statements must have been prepared in accordance with Generally Accepted Accounting Principles. If, after the date of the most recent financial statements, there has been a material change which is not reflected in the financial statements and which may impact the Proposer's ability to continue as a going concern, the Proposer shall provide the City with this additional information. To this end, the Proposer shall also have its chief financial officer prepare a statement certifying that there has been no material adverse changes made to the information supplied in the balance sheets, cash flow statements, and income statements after the date when the most recent financial statements were prepared.

The Proposer may, but is not required, to submit such information in a separately sealed envelope with the financial statements marked as "confidential." If the City receives such information and it is marked as "confidential," it shall, to the extent permitted under the law, keep the marked information confidential and refrain from disclosing such information to the public. However, the Proposer should be aware that information that the City uses to evaluate proposals, including a Proposer's annual revenue, are subject to disclosure as a public record. To the extent that the Proposer is apprised of any information for which disclosure is required under this section after Proposer submits its proposal, but before the City awards a new solid waste franchise agreement, Proposer shall immediately inform the City of such information in the same manner required under this section.

(iv) Key Employees

The Proposer shall provide a list of key employees, including their job descriptions and corresponding resumes, the names of the designated individuals that would work with the City on the implementation of the New Franchise. If a position has not yet been filled, the Proposer shall provide the minimum qualifications Proposer will require for the unfilled position. If the Proposer has multiple offices, please indicate which office each employee will work out of.

(d) Exhibit 4: Container Specifications

As required in Exhibit B to the Draft Agreement, the Proposer shall provide information on the specifications for the containers it shall use. This will allow the City to determine whether the containers meet industry standards and whether they meet the expectation for service delivery. Proposers should be prepared and able to provide physical samples of the containers for inspection by the City upon request.

(e) Exhibit 5: Multi-Family Dwelling Recycling Program

The Proposers must provide specific details regarding a Multi-Family Dwelling Recycling Program that is also subject to the requirements in Section 8.2.8 of the Draft Agreement. The Proposers have the option to offer either a mixed waste or source separated Multi-Family Dwelling Recycling Program. The Proposers submitting a source separated program may charge rates for the source separated recycling service and shall follow the site visits and reporting requirements as set forth in Section 8.2.8 of the Draft Agreement. The Proposers shall describe the Multi-Family Dwelling Recycling Program as Exhibit 5 to their proposal. Higher diversion rates will be reviewed favorably to the extent that the Proposer demonstrates the ability to meet that rate. The Draft Agreement will also include a provision for the collection of liquidated damages in the event there is a failure to meet the guaranteed minimum diversion rate.

(f) Exhibit 6: Commercial Recycling Program

As required in Exhibit D to the Draft Agreement, Proposers must provide specific details regarding the development of a commercial recycling program as set forth in Section 8.3.4 of the Draft Agreement. Proposers shall describe and attach this commercial recycling program as Exhibit 6 to their proposal. The Proposers shall have the option to offer either a mixed waste or source separated commercial recycling program. Proposers submitting a source separated program may charge rates for the service and shall follow the site visits and reporting requirements set forth in Section 8.3.4 of the Draft Agreement. Higher diversion rates will be reviewed favorably to the extent that the Proposer demonstrates the ability to meet that rate. The Draft Agreement includes liquidated damages for failure to meet the guaranteed minimum.

(g) Exhibit 7: Disposal or Diversion Facilities: Operating Facilities

The SOC provides recycling. Recycling will be transported to the SOC for sorting and sale. The closest transfer station is the Black Butte facility north of the City of Dunsmuir. As required

in Exhibit E to the Draft Agreement, Proposers must identify the facilities at which they intend to dispose of, process, and deposit all solid waste and material collected under the Agreement. This information should be identified as Exhibit 7 to the proposal.

For each solid waste facility the Proposer intends to use, please identify the following:

- the name and location of the facility;
- a statement regarding any relationship between the proposer and the facility owner/operator (if any);
- whether the facility will be used for processing, transfer only, transformation, disposal or other, and which waste streams will be delivered (e.g. commingled recyclables, green waste, mixed commercial waste, mixed residential waste, and/or construction material);
- the price expected per ton for each material/waste stream delivered;
- and the minimum diversion rate to be achieved for each waste stream.

Proposers must also provide the following information regarding their operating facilities:

- the yard address for equipment and personnel staging and arrangements for the maintenance of equipment;
- the office address for customer service, public relations, and franchise administration; and
- other operating facilities to be used in providing service under the franchise agreement.

(h) Exhibit 8: Confirming Use of Disposal or Diversion Facilities

In addition to the information required in Exhibit 7, the Proposer shall also provide documentation confirming that the facilities listed in Exhibit 7 will in fact accept materials that the Proposer collects under the Draft Agreement.

(i) Exhibit 9: Implementation Plan

The Proposer shall describe, in detail, their plan to implement the transition of solid waste handling services from the City's current solid waste handlers on January 1st, 2021 for all services. This implementation plan shall include at a minimum, but not be limited to, the following details regarding how the Proposer will provide collection services:

- When Containers will be ordered, received and distributed;
- The vehicles to be used for collection, including whether said vehicles must be ordered or are in stock. If vehicles must be ordered, the Proposer must specify the approximate date the vehicles will be received. The following vehicle information must also be included: (1) the make; (2) model; (3) model year; (4) type of vehicle fuel;

(5) vehicle type (front-loader, rear-loader, etc.); (6) waste stream to be collected (carts, bins, roll-off boxes); and (7) quantity of each type of vehicle;

- Public education steps;
- The expected level of City staff participation;
- Evidence of available personnel or the stated number of new personnel needed to perform if the Proposer is awarded the New Franchise and the plans for fulfilling said need; and
- The detailed procedures for addressing customer inquiries and complaints during the transition

(j) Exhibit 10: Transition Experience

The Proposer shall provide references and details, if any, of previous experience implementing a transition between a prior solid waste collection provider and itself for similar jurisdictions. The service transition reference(s) shall include the number and type of customers and the types of services to be performed.

(k) Exhibit 11: Evidence of Ability to Perform

The Proposer shall provide evidence that reasonably supports that the Proposer shall be able to perform the terms set forth in the Draft Agreement, including, but not limited to, evidence of Proposer's financial strength and other information relevant to its ability to provide and obtain the personnel and equipment required under the Draft Agreement, such as, but not limited to, evidence of the availability of the containers and vehicles required by the Draft Agreement.

(l) Exhibit 12: Insurance and Surety Evidence

The Proposer shall submit evidence that the entity has or is able to obtain the form of surety as required in Section 14 and insurance as required in Section 15 of the Draft Agreement.

(m) Exhibit 13: Affidavit re Anti-Collusion and No Other Pending Legal Actions

Proposer shall submit a fully executed copy of the Anti-Collusion and No Other Pending Legal Actions Affidavit which is attached to this RFP packet as **Attachment 5**.

(n) Exhibit 14: Solid Waste Franchise Experience

The Proposer shall identify, at a minimum, the names of all of the public agencies in California, where the Proposer currently provides solid waste collection service, including details on the type of services provided. Additionally, the Proposer should submit a brief description of the Proposer's experience in California providing solid waste services under exclusive agreements to city or county customers, if any, that demonstrate the Proposer's ability to perform the services being procured through this RFP. References from other jurisdictions for municipal customers with services most similar to the services requested in this RFP are requested, but not required. References shall include:

- the name of the jurisdiction;
- time period during which proposer provided service to the jurisdiction;
- the type and number of customers served (e.g. residential or commercial);
- the services performed (e.g. refuse collection, recyclable materials collection and/or mixed waste processing);
- residential collection methods (e.g. manual or automated);
- whether the services were exclusively or non-exclusively provided in the jurisdiction by the proposer; and
- the name, address and telephone number of the jurisdiction representative responsible for administering the contract.

(o) Exhibit 15: Diversion Rates

The submitted proposal shall include information regarding the Proposer's experience in assisting other public agencies in meeting their AB 939 diversion goals, with a preference, but not a requirement, for experience with other jurisdictions.

(p) Exhibit 16: Community Outreach

Proposer shall submit examples of successful community outreach programs that the Proposer has implemented for other public agencies.

(q) Exhibit 18: Proposal Enhancements

Note that the intent of this RFP is to focus on the specifically requested services. However, provided that the Proposer has submitted a proposal that meets all of the minimum requirements of this RFP, the Proposer may also offer additional enhancements that exceed said requirements and the Draft Agreement in this Exhibit 18. If an enhancement is offered, the Proposer shall describe the benefit in sufficient and specific detail so that the City, if desired, can include the enhancement as a term in the awarded franchise agreement. The Proposer shall clarify how the enhancement benefits the City and, if there are any costs to the City or customers associated with the enhancement and specifically what that cost is.

SECTION IV

PROPOSAL EVALUATIONS

4.1 City Rights

The City reserves the right to perform any of the following:

- Issue addenda.
- Modify the RFP and/or Draft Agreement.
- Cancel this RFP.
- Change the dates in the RFP schedule, including extending the submission deadline.
- Permit Proposers to submit information clarifying information or correcting errors in their submitted proposals.
- Permit minor deviations.
- Disqualify proposals that contain substantial deviations.
- Disqualify proposals that fail to complete all the required documents and provide all the required information. However, an otherwise completely responsive proposal may also include additional material that goes above and beyond the requirements specified in this RFP.
- Reject any and all of the submitted proposals.
- Request additional information from a Proposer or conduct its own evaluation of whether a Proposer is qualified and possesses the capacity to carry out the terms of the Draft Agreement.

4.2 City Council Retains Ultimate Authority to Select New Franchisee

The City Council retains the ultimate broad authority to exercise its discretion in awarding the New Franchise, the terms of the corresponding agreement, and the right to determine which proposal is in the City's best interest. **The City Council will consider the City staff's analysis of the submitted proposals and will independently select the hauler for the award of the New Franchise.** To this end, the City Council can reject any and all proposals, determine a proposal is nonresponsive and thus disqualified, and permit deviations from the RFP.

The City Council may, but is not required to, make its decision based on, but not limited to, City staffs' analysis, the Proposer's experience, implementation plan, financial health, rates, interviews (if any), inspection of a Proposer's equipment and facilities (if applicable), community involvement, or ***any other criteria*** the City Council determines is important.

The City Council does not commit to and is not required to award the New Franchise solely based on the lowest rates and may consider the value of all aspects of the proposals.

4.2 Review by City Staff

City staff (including City-retained consultants) will evaluate the proposals based on the criteria provided below and provide a summary analysis to the City Council. The categories that form the basis for **City staff's** analysis of submitted proposals is not necessarily the evaluation criteria that will be used by the City Council.

(a) Pass/Fail Checklist

City staff may, but is not required to, recommend applying a pass/fail checklist to reject as nonresponsive the proposals that do not meet the below requirements. However, the City Council is **not required** to accept City staff's recommendation that proposals not meeting the following checklist should be deemed nonresponsive, and thus rejected.

- (i) Proposer demonstrated the ability to obtain the insurance and surety required under the Draft Agreement.
- (ii) Proposer submitted a copy of its most recent financial statements and a certification statement from its chief financial officer.
- (iii) Proposer submitted a list of the containers it intends to use.
- (iv) Proposer submitted a list of disposal facilities and documentation that **confirms** the listed facilities will accept **from Proposer** the materials that the Proposer collects under the Draft Agreement. Black Butte Transfer Station is the closest for solid waste. The Siskiyou Opportunity Center is the closest for recycling.
- (v) Proposer submitted an executed copy of the Anti-Collusion Affidavit
- (vi) Proposer submitted an executed copy of the Affidavit re No Other pending legal actions
- (vii) Proposer submitted a complete rate schedule and supporting costs
- (viii) Proposer's proposal was time stamped by the deadline specified in the RFP.

(b) City Staff Criteria

The criteria the City staff may use to analyze the proposals it receives may include, but is not limited to, the following categories:

(i) Ability to Successfully Implement the Franchise and Perform in Accordance with the Draft Agreement

The Proposer's implementation plan as required under Section 3.1.i of the RFP will be evaluated based on whether it demonstrates that the Proposer can or will likely be able to fulfill the obligations set forth in the Draft Agreement. Higher consideration may be given to Proposers that provide a detailed and specific explanation of how they will implement the Draft Agreement. In evaluating the proposals, City staff may consider, **but is not limited to**, the following sub-categories:

- A. Equipment and Transition. Proposer's demonstrated ability to maintain the needed equipment to perform under the Draft Agreement and evidence of Proposer's ability to successfully implement a transition in service.
- B. Financial Status. Proposer's demonstrated financial stability, comparisons of additional revenue from this franchise to Proposer's current revenue stream, financial stability of Proposer based on its financial ratios and ability to obtain insurance.
- C. Operations. Reasonableness of Operating Assumptions.
- D. Community Involvement. Proposer's commitment to establishing a local presence in the City, by joining the local Chamber of Commerce (if Proposer is not already a member), sponsoring local events, or other actions and activities Proposer sets forth which City determines will contribute to establishing a local presence.
- E. Exceptions. The exceptions to the Draft Agreement as outlined and permitted in Section 3.1.b of the RFP, including the amount of exceptions put forward by each Proposer and the type of exceptions.
- F. Proposed Recycling Programs.
- G. Customer Service Procedures.

(ii) Rate Schedule

In evaluating the rates submitted by a Proposer, City staff may consider the costs of services to customers as measured by the rate revenues, as well as the reasonableness of the proposed rate revenue based on whether there is a logical relationship between the rates, costs, and operating assumptions. City staff may also consider the attractiveness of the maximum rates each Proposer provides in comparison with rates proposed by other Proposers.

(iii) References/Experience.

A. Experience Proposer's demonstrated ability to provide solid waste handling services to other entities, including, but not limited to, the satisfaction of other entities with Proposer's performance, the successful implementation of community outreach programs, and Proposer's experience transitioning between prior solid waste handling haulers and itself.

B. Diversion Goals. Proposer's ability to meet AB 939 diversion goals when providing solid waste handling services to other public entities, including the applicable programs the Proposer implemented to meet or progress towards said goals.

C. Prior Legal Actions. The number of significant prior legal actions will be considered in relation to the size of Proposer's company.

(iv) Other

A. Interviews. The City Council and/or City staff may invite certain Proposers to clarify, present, or participate in an interview before awarding the franchise.

4.3 Award of New Franchise

Throughout the RFP process, including the review, negotiation and selection period, the City reserves the right to request additional information or clarification regarding submitted proposals from any Proposer. Additionally, the City can, during the review and negotiation period, select a waste hauler without further negotiation. The City is not required to award the New Franchise to the overall lowest cost proposal or to the proposal recommended by the City staff and may consider other factors such as which proposal will deliver the best service for the lowest reasonable cost. The City may, in its sole discretion, negotiate with one or more Proposers and Proposers selected for negotiation do not need to be Proposers recommended by City staff.

It is the City's intent that this RFP be comprehensive in order to allow the City to objectively compare the submitted proposals. Proposals that substantially deviate from the RFP are discouraged. Each Proposer is responsible for reading the Draft Agreement in its entirety to ensure the Proposer's ability to perform under the terms of the Draft Agreement. Proposers are advised that this RFP does not constitute a contract between the City and any said Proposer. Proposers submit their proposals at their own risk. The City shall not reimburse and is not liable to any Proposer for the costs incurred or associated with its proposal, including the costs associated with preparing a response to the City's RFP. By participating in the RFP process, Proposers agree to indemnify and hold harmless the City, its employees, agents, and representatives for any claims regarding the inaccuracy of any of the provided data. Proposers are responsible for and encouraged to independently gather data needed to aid in the preparation of each respective proposal.

The successful Proposer shall, within fourteen (14) business days from when the solid waste franchise is awarded, provide evidence of the insurance required under Section 15 of the Draft Agreement. The successful Proposer shall also, contemporaneously with the execution of the final Agreement, provide evidence of the surety required under Section 14 of the Draft Agreement.

ATTACHMENT 1

Table of Contents

1-A	Residential/Commercial Rates
1-B	Collection Schedule
1-C	City Events
1-D	Revenue
1-E	Tipping Fees

RESIDENTIAL AND COMMERCIAL RATES

As of July 1, 2020

ATTACHMENT 1-A

Service Type	Rate
65 Gallon Can	\$19.26
95 Gallon Can	\$28.32
Dumpster Rental	\$23.43
1 yd Dumpster	\$64.82
1-1/2 yd Dumpster	\$76.93
2 yd Dumpster	\$95.20
3 yd Dumpster	\$157.81
Medical Dumpster	\$150.44

*customers have option to increase number of cans and number of pickups in a week. This is a simple multiplication of the rates above.

REFUSE COLLECTION SCHEDULE

As of July 1, 2020

ATTACHMENT 1-B

Location	Pick-up Day
North of Willow Street	Monday
South of Willow Street	Thursday

*Commercial pickups along Dunsmuir and Sacramento streets have option to add a pickup(s) on any additional weekday(s).

CITY SPONSORED EVENTS

ATTACHMENT 1-C

Event	Day
Green Waste Day	TBD

REVENUE

ATTACHMENT 1-D

Fiscal Year 2019-2020	
Refuse Collection	\$289,670
Extra Garbage	\$22,100
Dumpster Rental	\$5,660

TIPPING FEES

ATTACHMENT 1-E

July 2019	\$6,951.42
August 2019	\$6,871.03
September 2019	\$6,543.38
October 2019	\$6,276.39
November 2019	\$6,252.81
December 2019	\$6,322.92
January 2020	\$5,893.22
February 2020	\$5,407.20
March 2020	\$5,984.51
April 2020	\$5,745.60
May 2020	\$6,975.05
June 2020	\$7,304.74

Attachment 2

Draft Solid Waste Agreement

This agreement will be modified upon the selection of the Franchisee and what services are going to be provided

(attached)

AGREEMENT

BETWEEN

CITY OF DUNSMUIR

AND

[INSERT HAULERNAME]

FOR

SOLID WASTE HANDLING SERVICES

EFFECTIVE July 1, 2021

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· MAXIMUM RATE SCHEDULE FOR SOLID WASTE HANDLING

1 SERVICES

3 CONTAINER/BIN SPECIFICATIONS

29.14 MULTI-FAMILY DWELLING RECYCLING PROGRAM

29.15 COMMERCIAL RECYCLING PROGRAM

FACILITIES TO BE USED FOR DISPOSAL AND PROCESSING

EXHIBIT A

EXHIBITB

EXHIBITC

EXHIBITD

EXHIBITE

AGREEMENT

This Agreement ("Agreement") is entered into to be effective as of the 1st day of MONTH YEAR, by and between the City of Dunsmuir ("City") and [INSERT NAME OF HAULER], ("Contractor") (collectively, the "Parties") to provide an exclusive franchise for Solid Waste Handling Services within the City.

RECITALS:

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is in the public interest to authorize and require local agencies to make adequate provision for the disposal of all Solid Waste within their jurisdictions.

B. Pursuant to California Public Resources Code Section 40059(a)(1), the City Council of the City has determined that the public health, safety, and welfare require that an exclusive franchise agreement be awarded to a qualified solid waste enterprise for Solid Waste Handling Services within the City Limits.

C. City and Contractor are mindful of the provisions of the laws governing the safe collection, transportation, recycling, and disposal of Solid Waste, including AB 939, AB 341, the Resource Conservation and Recovery Act ("RCRA"), and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). City and Contractor desire to leave no doubts as to their respective roles, and to memorialize that by entering into this Agreement, City is not thereby becoming an "an-anger" or a "generator" as those terms are used in CERCLA, and that it is Contractor, not City, who is "arranging for" the collection, transport for disposal, composting, and recycling of municipal Solid Waste in the City which may contain hazardous substances. City and Contractor understand and agree that it is Contractor, and not City, who will arrange to collect Solid Waste, that City has not, and, by this Agreement does not, instruct Contractor on its collection methods, nor supervise the collection process, nor do the Parties intend to place title to such Solid Waste in City, but rather intend that whatever, if any, title in and to such Solid Waste that otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Contractor, and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. By entering this Agreement City and Contractor further desire to conform that Contractor has agreed to indemnify the City in connection with any claims relating to the inadvertent or intentional collection, transportation and/or disposal of hazardous materials that may occur in connection with Contractor's performance under this Agreement.

E. Contractor has agreed, as part of this Agreement, to provide such services as are necessary or desirable to ensure City complies with the requirements of AB 939, AB 341 and Public Resources Code Section 40000, et seq.

COVENANTS:

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, City and Contractor hereby agree as follows:

SECTION 1. RECITALS

The Parties acknowledge the above recitals are true and correct and incorporate them herein as if they were fully restated.

SECTION 2. DEFINITIONS

Whenever any term used in this Agreement has been defined by the California Public Resources Code, the definition of such term set forth therein shall apply unless the term is otherwise defined in this Agreement.

2.1 AB 341

"AB 341" shall mean Assembly Bill 341 from the 2011-2012 Regular Session of the California Legislature (Chapter 476, Statutes 2011).

2.2 AB 939

"AB 939" shall mean the California Integrated Waste Management Act of 1989, currently codified as California Public Resources Code Section 40000 et seq., as it may be amended from time to time.

2.3 Affiliate

"Affiliate" means a business in which Contractor owns a direct or indirect ownership interest, a business (including corporations, limited and general partnerships and sole proprietorships) which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

2.4 Animal Waste

"Animal Waste" shall mean animal carcasses, dead animals, and/or parts or portions of dead animals. Animal Waste shall not include manure.

2.5 Applicable Laws

"Applicable Laws" shall mean all federal, state, county, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over an aspect of this Agreement that are in force on the Effective Date, and as may be enacted, issued or amended thereafter, including without limitation City's Municipal Code, AB 939 and AB 341.

2.6 Billings

"Billings" or "Billing" or "Bill" means the statements of charges provided to Customers for services rendered by Contractor pursuant to the terms of this Agreement.

2.7 Bins

"Bins" shall mean a Container, including dumpsters, compactors, and any similar such devices with a capacity of under ten (10) cubic yards.

2.8 Bulky Items

"Bulky Items" means Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with and without Freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); residential wastes (including wood waste, tree branches, scrap wood, in the aggregate not exceeding one cubic yard per Collection); and clothing. For purposes of this Agreement, and notwithstanding any provision hereof to the contrary, Bulky Items shall specifically include items commonly known in the waste industry as "brown goods," "e-waste" and "universal waste" (including, without limitation all types of electronic waste, stereos, televisions, computers and monitors, cellular phones, VCRs, microwaves and other similar type of equipment and products), batteries, and fluorescent light tubes. Bulky Items do not include car bodies, Construction and Demolition Debris or (with the exception of appliances/white goods described above) items that cannot reasonably be moved with equipment of the type which, pursuant to industry standards, would normally be carried in a truck collecting Bulky Items. In the event a question arises as to whether a specific item, or category of items meets the definition of Bulky Items, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

2.9 Cart

"Cart" means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated process, as opposed to a manual process of lifting and dumping.

2.10 City

"City" shall mean the City of Dunsmuir, a municipal corporation, located in Siskiyou County, California.

2.11 City Council

"City Council" shall mean the City Council of City.

2.12 City Limits

"City Limits" shall mean the territorial boundaries of the City together with all amendments and changes thereto, which boundaries are depicted on maps, incorporated herein by reference, that are kept on file in the office of the City Clerk of the City of Dunsmuir, and which are from time to time amended to reflect changes.

2.13 City Manager

"City Manager" shall mean the City Manager of the City of Dunsmuir or his or her designee.

2.14 Collect/Collection

"Collect" or "Collection" shall mean to take physical possession of, transport, and remove Solid Waste from a Premises.

2.15 Commercial Premises

"Commercial Premises" means Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which hotels and motels are operated and upon which Multi-Family Dwellings exist shall be deemed to be Commercial Premises.

2.16 Container

"Container" means all types of Solid Waste receptacles, including Carts and Bins.

2.17 Contractor

"Contractor" shall mean [INSERT NAME OF HAULER], the entity granted the franchise pursuant to this Agreement, or any party permitted pursuant to the terms hereof permitted to become the successor or assignee thereof.

2.18 Customer

"Customer" or "Customers" shall mean any person receiving Solid Waste Collection services from Contractor within the Franchise Area.

2.19 Dwelling Unit

"Dwelling Unit" shall mean one or more rooms designed for occupancy by one family for living and sleeping purposes and containing kitchen facilities or an area designed for the preparation of food for use solely by one family.

2.20 Effective Date

"Effective Date" shall mean July 1st .

2.21 Environmental Laws

"Environmental Laws" means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §2601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

2.22 Franchise Area

"Franchise Area" shall mean all Premises within the City Limits, including Premises which may be annexed and thereby added to the City Limits following the Effective Date.

2.23 Franchise Fee

"Franchise Fee" shall mean the franchise fee set forth and more fully defined in Section 11 hereof.

2.24 Green Waste

"Green Waste" means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees (not more than six (6) inches in diameter or 48 inches in length) and similar materials as more fully described herein.

2.25 Gross Receipts

"Gross Receipts" shall mean and include all monies, fees, charges, consideration, and revenue received, charged or imputed to Contractor and any Affiliate of Contractor, in connection with, arising from, or in any way attributable to the Solid Waste Handling Services carried out by or on behalf of Contractor pursuant to this Agreement. Gross Receipts includes, without limitation, monthly Customer charges for Collection of Solid Waste, without subtracting

Franchise Fees, fees imposed and collected pursuant to this Agreement, sums collected in connection with Temporary Services, and transportation charges. Gross Receipts does not include revenue from the sale of Recyclable Material, Green Waste, food waste, and other material which is diverted from disposal.

2.26 Hazardous Substance

"Hazardous Substance" shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances," "hazardous materials," "Hazardous Wastes," "toxic waste," "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7401 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local laws or regulations, including any of the Environmental Laws, currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

2.27 Hazardous Waste

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

2.28 Multi-Family Dwelling

"Multi-Family Dwelling" means any building or lot containing more than one Dwelling Unit at which Contractor determines (and City agrees) the Dwelling Units must receive Solid Waste Collection services through the use of shared Bins, since they are not reasonably able to store Carts or otherwise receive individualized Solid Waste Collection services through the use of the automated Collection system utilizing Carts contemplated by this Agreement for Single Family Dwellings. Unless otherwise determined as set forth above, any Premises upon which five (5) or more Dwelling Units exists shall be deemed to be a Multi-Family Dwelling. Any ambiguity as to whether a Customer's Premises qualifies for purposes of this Agreement as a Single-Family Dwelling or Multi-Family Dwelling shall be resolved by the City Manager whose decision shall be final.

2.29 Municipal Code

"Municipal Code" shall mean City's Municipal Code.

2.30 Person

"Person" shall mean any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Siskiyou, towns, cities, and special purpose districts.

2.31 Premises

"Premises" shall mean any land, building, and/or structure within the City Limits where Solid Waste is generated or accumulated.

2.32 Recyclable Material

"Recyclable Material" or "Recyclables" shall mean that Solid Waste discarded within the Franchise Area, which is capable of being recycled, including Green Waste.

2.33 Residential Premises

"Residential Premises" shall mean all premises upon which Dwelling Units exist. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which hotels and motels are operated or upon which Multi-Family Dwellings exist shall be deemed to be Commercial Premises.

2.34 Roll off Box

"Roll off Box" means Solid Waste Collection Containers of ten (10) yards or larger, including compactors.

2.35 Single Family Dwelling

"Single Family Dwelling" means a building or lot containing one Dwelling Unit, and for purposes of this Agreement includes buildings and lots with more than one Dwelling Unit where such Dwelling Units are determined by the City to be reasonably able to receive individualized Solid Waste Collection service by the automated process utilizing Carts contemplated herein. Any ambiguity as to whether a Customer's Premises qualifies as a Single-Family Dwelling or Multi-Family Dwelling shall be resolved by the City Manager whose decision shall be final.

2.36 Solid Waste

"Solid Waste" shall mean and include all discarded putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, Refuse, rubbish, construction waste, industrial waste, commercial solid waste, bulky items, and any other discarded solid, semisolid, and liquid waste permitted to be disposed of at a Class III landfill and which are included within the definition of "Nonhazardous Solid Waste" set forth in the California Code of Regulations, as it may be amended from time to time. Solid Waste does not include hazardous (Class I) waste, low-level radioactive waste, untreated medical waste, or Special Wastes as defined herein.

2.37 Solid Waste Handling Services

"Solid Waste Handling Services" means the collection, transfer, transport, recycling, processing, and disposal of Solid Waste for premises within the City.

2.38 Special Wastes

"Special Wastes" shall mean wastes other than Solid Waste including sewage, sludge, industrial sludge, asbestos, auto bodies, tires, used motor oil, hazardous waste, animal waste, explosive substances, radioactive materials, and other materials which may not be disposed of at a Class III landfill or which require special handling or at any facility approved by the City in accordance with Section 8.1.2 of this agreement.

2.39 Temporary Service

"Temporary Service" shall mean Solid Waste Handling Services provided by Contractor on an as-needed and temporary basis to any premises within the City in conjunction with construction, demolition, cleanup or other projects, and by use of temporarily placed bins or roll off boxes.

2.40 Term

"Term" shall have the meaning ascribed in Section 6 of this Agreement.

2.41 Transformation

"Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting.

**SECTION 3.
GRANT OF EXCLUSIVE FRANCHISE FOR SOLID WASTE
HANDLING SERVICES FROM ALL RESIDENTIAL AND
COMMERCIAL PREMISES, AND FOR PROVIDING
TEMPORARY SOLID WASTE HANDLING SERVICE**

3.1 Scope of Franchise

Except as hereinafter expressly set forth, City hereby grants to Contractor and Contractor hereby accepts from City, for the *term* hereof, the exclusive contract, right, and privilege to

collect, transport, and dispose of all Solid Waste generated or accumulated within the Franchise Area. The exclusive franchise, right and privilege to provide Solid Waste Handling Services within City granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable state and federal laws, now in effect and adopted during the Term of this Agreement, and the scope of this Agreement shall be limited by all applicable Current and developing laws and regulations. In the event that future interpretations of current law or future enactments limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Contractor as a result thereof.

3.2 Matters Excluded from Scope of Franchise

Notwithstanding any other provisions set forth in this Agreement to the contrary, the exclusive franchise granted herein shall exclude the collection, transportation, recycling, and disposal of:

(A) any Solid Waste otherwise within the scope of this Agreement which is transported by a Self Hauler as that term is used in the Municipal Code, or any other City ordinance, resolution, regulation or policy, as such may be adopted or amended from time to time;

(B) the sale or donation of Recyclable Material by the person or entity that generated such Recyclable Material (the "Generator") to any person or entity other than Contractor; provided, however, to the extent permitted by law, if the Generator is required to pay monetary or non-monetary consideration for the Collection, transportation, transfer, or processing of Recyclable Material to any person or entity other than Contractor, the fact that the Generator receives a reduction or discount in price (or in other terms of the consideration the Generator is required to pay) shall not be considered a sale or donation;

(C) any Solid Waste otherwise within the scope of this Agreement which is collected or transported to a disposal or recycling facility by City employees in the course and scope of their employment with City;

(D) the collection, transportation, or disposal of hazardous waste; universal waste; E-waste; biohazardous waste; untreated medical waste; infectious waste; animal waste; used cooking fats, oils, grease and similar waste; or other materials which do not constitute Solid Waste;

(E) the collection, transportation, and disposal of construction and demolition waste by a contractor, handyman, repairman, or other similar service provider, using its own equipment, as an incidental part of the services provided to its customers, rather than as a hauling service, provided that such waste is not collected or transported by a third party hired for the primary purpose of collecting and transporting said materials;

(F) the collection, transportation, and disposal of green waste and related Solid Waste by a gardener, or landscaper, as an incidental part of the gardening or landscaping services provided to its customers, rather than as a hauling service provided that such Solid Waste is not collected or transported by a third party hired for the primary purpose of collecting and transporting said materials; and

(G) Solid Waste Handling Services provided by any person having a legal right to continue doing so, pursuant to Public Resources Code Section 49520, et. seq., or otherwise, as long as and to the extent such legal right continues to exist; except that to the degree any territory in which Contractor has a franchise granted by another governmental entity is annexed into City during the term, Contractor agrees the provisions of this Agreement shall apply to such territory and further acknowledges that this Agreement constitutes any notice required by the Public Resources Code in connection therewith.

**SECTION 4.
ENFORCEMENT OF EXCLUSIVITY**

Contractor shall be responsible for enforcing the exclusivity of this Agreement. City shall reasonably assist Contractor in its efforts to enforce the exclusivity hereof. In addition, City shall adopt such ordinances or other regulations as it deems to be necessary or desirable to protect the exclusive rights granted herein. City shall have the right, but not the obligation, to enforce the exclusivity hereof, including by instituting appropriate legal proceedings, and/or to request that Contractor do so. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City. Contractor shall reimburse City for its reasonable legal costs, extraordinary administrative costs (including staff time), or other expenses incurred in connection with City's actions to either enforce the exclusivity hereof, or to assist Contractor in doing so.

**SECTIONS.
ACCEPTANCE; WAIVER**

Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor waives Contractor's right to challenge the terms of this Agreement under federal, state, or local law, or administrative regulation. Contractor waives any right or claim to serve the City or any part of the City under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code.

**SECTION 6.
TERM**

The term of this Agreement (the "Term") shall be for an approximate seven (7) year period of time with the commencement date for Solid Waste Collection services as of July 1, 2021. The Term of the Agreement shall end at midnight on June 30, 2028, unless this Agreement is terminated sooner pursuant to Section 18 hereof, or otherwise.

The City Council shall have the unilateral option to exercise three (3) one (1) year extensions to the term of the Agreement such that if all three (3) one (1) year extension options are exercised, the term of the Agreement expires at midnight on June 30, 2031. Prior to exercising each one (1) year extension option, the City Council shall review a performance review which the City Manager is hereby authorized to conduct during fiscal years 2028-2029, 2029-2030, and 2030-2031 respectively, after receiving an advance deposit, in an amount subject to the City Manager's reasonable determination, to cover the cost of such review from Contractor. Contractor shall be responsible for all costs of such performance review and said performance review will be separate from and in addition to the performance review set forth in Section 17.

If the City Council does not exercise the option to extend the term as set forth above, as evidenced by a formal action of the Council taken in a duly noticed open meeting, on or before December 31 of the year preceding the expiration of the current term, said option shall expire and this Agreement shall automatically terminate at midnight on June 30, 2028 if no options have been exercised, or June 30, 2029 or June 30, 2030, respectively, if one or two one (1) year extensions have been previously exercised. While it is the intent of the City Council to exercise the forgoing option to extend the term absent a negative performance review, the decision to exercise said option shall be subject to the City Council's sole, absolute and unfettered discretion.

SECTION 7. CONDITIONS TO EFFECTIVENESS OF AGREEMENT

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

7.1 Accuracy of Representation

All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true, and correct on and as of the Effective Date of this Agreement.

7.2 Absence of Litigation

There shall be no litigation pending in any court challenging the award of this Agreement to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.

7.3 Furnishing of Insurance and Bond or Letter of Credit.

Contractor shall have furnished evidence of the insurance and Surety required by Sections 14 and 15 hereof, and shall comply with all ongoing requirements relating thereto.

7.4 Effectiveness of City Council Action

The City Council's Resolution approving this Agreement shall have become effective pursuant to California law.

7.5 Payment of Fees and Costs

Contractor shall have made payment to City of all fees, costs and other payments due as more fully set forth in Section 11.

**SECTIONS.
SOLID WASTE HANDLING SERVICES
PROVIDED BY CONTRACTOR**

8.1 General

8.1.1 Equipment

Contractor shall furnish all labor, supervision, materials, supplies, and equipment necessary to provide for all services required by the terms of this Agreement.

8.1.2 Disposal and Processing Facilities

Contractor has provided the facilities that it intends to use for the disposal, processing, and/or reuse of Solid Waste and Recyclable Materials Collected pursuant to this Agreement, which is attached hereto as Exhibit E and incorporated herein by reference. Contractor shall not utilize other facilities for these purposes without first updating Exhibit E and obtaining the prior written consent of the City Manager, which consent shall not be unreasonably withheld.

8.1.3 Performance Standards

Contractor shall perform Solid Waste Handling Services as required hereunder in a workmanlike manner consistent with good housekeeping standards and all relevant provisions of Applicable Laws.

8.1.4 Noise and Disruption

Contractor shall perform Solid Waste Handling Services as required hereunder in such a manner as to minimize noise and other disruptive impacts including, without limitation, those upon traffic.

8.1.5 Collection Times

Contractor shall not commence Collection of Solid Waste for customers at commercial premises (excepting multi-family dwellings) until 6:00 a.m. and for customers at residential premises and at multi-family dwellings until 7:00 a.m., nor shall such activities occur after 7:00 p.m. for customers at commercial premises (excepting multi-family dwellings) and 6:00 p.m. for customers at residential premises and at multi-family dwellings. The City Manager may require Contractor to comply with time frames applicable to residential premises in connection with collection of Solid Waste for customers at commercial premises whose premises are in

close proximity to residential premises. Close proximity is typically considered five hundred (500) feet, but the ultimate distance shall be determined by the City Manager in his or her sole discretion and may result in an established distance that is more or less than five hundred (500) feet. Solid Waste Collection at Residential Premises and at Multi-Family Dwellings shall not occur on Sundays; excepting Temporary Bin Services and Collection occurring on Sundays following such holidays as may be approved by the City Manager.

8.1.6 Collection Schedule

The Contractor shall set the collection routes. Customers at all residential and commercial premises within the City will have not less than one established collection day each week. Contractor shall provide notice to each customer of its established collection day(s), and shall provide at least one week's notice to customers of any change in their established collection day(s). Notwithstanding any provision herein to the contrary, should any established collection day fall on a legal holiday, or on any other holiday which is observed by either a landfill or other lawful disposal site to which Solid Waste is taken for disposal, or a recycling facility to which Recyclable Material is taken, Contractor shall provide for collection one (1) day later during the pick-up week, and the regular collection schedule shall be resumed the following week. A pick-up week shall be defined as Monday through Saturday. Collections should correspond to the transfer stations schedule of operation, which at this point is closed Thursdays and Sundays. Contractor may not change its established collection schedules without obtaining the prior written consent of the City Manager.

8.1.7 Commingling of Routes

Contractor shall not during its collection process commingle Solid Waste Collected hereunder with Solid Waste Collected in any other City, or on behalf of any other entity operating or existing within City that is not subject to this Agreement, and is specifically prohibited from combining collection routes related to services provided pursuant to this Agreement with collection routes for other jurisdictions it may service.

8.1.8 Replacement of Containers

Contractor shall, whenever possible, return carts/cans to the parkway adjacent to the curb, and not the street gutter, upon completing collection. Contractor shall replace all bins in the location upon the property of each customer utilizing bins designated for storage of bins, and shall secure gates, doors, and/or enclosures when applicable.

8.1.9 Contractor's Containers

(A) Contractor's Containers shall meet the minimum standards set forth on the attached Exhibit B. Carts delivered to customers after the effective date shall be newly manufactured and have never been previously used for the collection of Solid Waste.

(B) In the case of an automated system the Contractor shall provide three sizes of Carts (small, medium and large) having capacities of approximately 35 gallons, 64 gallons and 96 gallons, with at a minimum one container for Solid Waste until recycling and green waste programs are developed. Notwithstanding the foregoing, the Parties recognize that different vendors provide Carts of slightly different dimensions, and hence the capacity of Cart sizes specified in this Agreement may vary.

(C) Contractor shall be responsible to maintain and replace, as necessary, all of its Containers.

(D) All Contractor's containers shall be maintained by Contractor in good repair, and any question as to the meaning of this standard shall be resolved by the City Manager.

(E) Contractor shall deliver containers to each customer at no additional charge.

(F) Contractor shall ensure it maintains an accurate list that contains the total number of carts/cans at each service address and the serial number or other identifying information associated with each cart/can located at such address. Contractor shall keep this list up to date at all times, provide it to City upon request, and shall include a current updated list with each annual report as set forth in Section 23.3. In addition, Contractor shall provide this list to City within thirty (30) days of the effective date of this Agreement.

(G) All carts/cans shall be maintained by Contractor in a watertight condition, as shall all bins which are used primarily for the disposal of Solid Waste containing liquids.

(H) Within twenty-four (24) hours after notification (Thursdays, Sundays and holidays excepted), Contractor shall repair and maintain, remove graffiti from, and replace lost, stolen or damaged carts at no charge to customers. However, Contractor shall be entitled to charge customers for the replacement of any can that has been damaged by a customer's willful neglect or abuse, ordinary wear and tear excepted, with such charges being subject to the City Manager's approval and at a fee no higher than Contractor's actual cost of repair and replacement. Notwithstanding the above, upon request and up to one time per calendar year, Contractor shall exchange a customer's cart for a new or "like new" can at no additional charge if necessary.

(I) Contractor shall at customer's request annually refurbish, replace, and steam clean as necessary all bins and roll off boxes at no charge to customers; provided, however, City may require the steam cleaning or replacement of bins utilized at restaurants, bars and grocery stores/markets more frequently if it determines such action is needed to protect public health and safety. Additional steam cleaning shall be provided to any customers who request it at a charge not to exceed the maximum rate set forth in Exhibit A hereto, or alternatively Contractor shall provide a replacement bin/roll off box to customers at no charge.

(J) Contractor shall remove any graffiti that appears on its Containers within twenty-four (24) hours after becoming aware of it at no charge to Customers.

(K) All Bins and Roll off Boxes shall be kept freshly painted in a uniform fashion and shall be identified with Contractor's name and phone number in letters not less than three inches high on its exterior so as to be visible when the container is placed for use.

(L) At a customer's request, Contractor shall provide bins with locking lids and locks and may charge rates to customers for locking bins which do not exceed the maximum rates set forth on Exhibit A.

8.1.10 Missed Pick-ups

In case of a missed pick-up called in by a customer, Contractor shall collect Solid Waste and Recyclable Material from such customer no later than the next day of the pick-up week following the date of the call. Records of the addresses of all missed pick-ups shall be maintained by Contractor and shall be reported to City upon request. If Contractor demonstrates to the satisfaction of the City Manager a pattern of ongoing late "set-outs" by a given customer, missed pick-ups resulting from late set-outs by that customer shall not be counted as missed pick-ups in evaluating Contractor's performance hereunder. The customer service phone system required by Section I 0.8.2 hereof is intended, among other things, to serve as a "hotline" for customers to call in the event Solid Waste placed for collection is not collected by Contractor and to facilitate having such Solid Waste collected as soon as reasonably possible, and in no event later than as required by the provisions hereof.

8.1.11 Record of Non-collection

As more fully set forth herein, Contractor shall collect all Solid Waste placed for collection by customers in containers, excepting materials that do not meet the definition of Solid Waste (such as hazardous materials) or which are commingled with such materials. Whenever Contractor determines not to collect any Solid Waste deposited for collection, Contractor shall leave a tag at least 2" by 6" in size, indicating the reason for Contractor's refusal to do so. This information may be either handwritten or left by means of a check system (i.e., checking off boxes on a preprinted form). The tag shall provide Contractor's business name and its local telephone number and shall be securely fastened to the container or the article refused. Contractor shall maintain a record of all such lagging's at its place of business. Such record shall contain the date of such notice, street address, reason for non-collection, and a summary of any communications between Contractor and the customer involved. Such notice shall be retained so that it may be inspected by representatives of City upon request.

8.2 Residential Solid Waste Handling Service

8.2.1 Single Family Dwellings -Automated Collection

Contractor shall provide each customer at a single-family dwelling with one cart designated for the collection of mixed Solid Waste (a Refuse Cart). Contractor shall provide each customer with a ninety-six (95) gallon Refuse Cart, excepting that any Customer requesting a smaller Refuse Cart(s) shall be provided with a sixty-four (65) gallon or thirty-five (35) gallon Refuse Cart instead. Contractor shall Collect all Solid Waste placed out for Collection in a Refuse Cart by each Customer at a Single Family Dwelling not less than once per week using an automated Collection system at rates set by the contractor. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one or more additional

Refuse Carts, and shall Collect all Solid Waste. Wherever feasible, Customers shall be directed by Contractor to place Carts for Collection either on the parkway adjacent to the curb, in front of their Premises, or adjacent to their Premises in the alley or easement in the rear of their Premises. If a Customer and Contractor cannot agree upon a Collection location, or if City determines the selected location may cause safety or other concerns, City may make the final determination of the Collection location. It is the intent of the parties that the services provided under this Agreement will result in an automated Collection system that includes source separation of recyclable materials. Accordingly, if Solid Waste is routinely placed for Collection other than in a Refuse Cart, Contractor shall work with the Customer involved to determine if the Customer is in need of additional or larger Refuse Carts. The City Manager is authorized to require Contractor to deliver additional Refuse Carts to any such Customers or to require such other action of Contractor as is reasonably deemed necessary to ensure the Collection system, including specifically the recycling programs, contemplated by this Agreement is achieved.

8.2.1.5 Single Family Dwellings - Non-automated Collection

Contractor shall continue with can pick up as previously provided by Clemens Waste Hauling Inc. (CWH).

8.2.2 Walk-Out Service

Contractor shall provide eligible Customers with "walk-out service" as set forth in this paragraph at no additional charge. This service shall require Contractor to use its own forces to bring a Customer's Carts from a Customer's backyard, side yard, or such other location at which Customer's Containers are regularly stored, to Contractor's Collection Vehicle; and, after disposal of the contents thereof, returning said Containers to the location where they are regularly stored. To be eligible for this service, a Customer shall have a DMV issued disabled person placard/license plates, and provide a letter to Contractor from a physician confirming the Customer is unable to move his/her Catts to the curb, and that to the best of the physician's knowledge there is no other capable persons living in Customer's household to provide this service. Contractor may require each eligible Customer to provide a new letter from a physician on an annual basis in order to maintain eligibility for walk-out service. Any dispute regarding a Customer's eligibility for walk-out service shall be resolved by the City Manager. Contractor may provide Customers who are not eligible for free walk-out service pursuant to the forgoing with walk-out service at a rate which shall not exceed the maximum rate set forth in Exhibit A. Contractor may require as a condition of walk-out service that a Customer sign a standardized agreement, the terms of which shall be subject to City's approval, which authorizes entry onto the Customer's property and holds Contractor harmless from liability (including specifically liability related to pets escaping) associated with Contractor providing such service.

8.2.3 Recycling Program for Single Family Dwellings Using Carts

If an automated collection system is to be considered the Contractor shall provide each Customer at a Single Family Dwelling with one (1) ninety-six (96) gallon Cart designated for the Collection of Recyclables (a Recycling Cart) at no additional charge. Any Customer requesting smaller Recycling Cart(s) shall be provided with a sixty-four (64) gallon or thirty-five (35) gallon Recycling Cart(s) by Contractor instead of the standard ninety-six (96) gallon Cart noted above. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one or more additional Recycling Carts at no additional charge. Contractor shall Collect Recyclable Material placed in Recycling Carts for Collection from each Customer

at a Single Family Dwelling on the same day as such Customer's Refuse Cart is Collected, utilizing an automated Collection process. Customers shall be directed to place Recycling Carts in the same location for Collection as Refuse Carts. At a minimum the following materials shall be allowed to be deposited by Customers for Collection in Recycling Carts aluminum cans; glass jars and bottles; bi-metal, and tin cans; empty aerosol containers; polyethylene terephthalate plastic ("PET"); high density polyethylene plastic ("HDPE"); plastics types 3 - 7; plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak© and waxed cardboard); coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

8.2.3.5 Recycling Program for Single Family Dwelling Using Blue Bags

If an automated system is not provided Contractor shall continue, at a minimum, the blue bag program as previously provided by JSS.

8.2.4 Curbside Grease Collection Program

If ever required by the applicable sanitation district, or other regulatory agency, Contractor shall design a program for the collection of grease, fat, oils and similar waste generated from household cooking activities (the "Curbside Grease Collection Program") that the City Manager finds satisfactory and approves. Contractor shall be responsible to ensure the Curbside Grease Collection Program complies with all Applicable Laws and regulations. At such time as (if) a Curbside Grease Collection Program is implemented, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit A in order to compensate Contractor for implementing such a program.

8.2.5 Green Waste and Program for Single Family Dwellings Using Carts

Once a program is developed, Contractor shall provide all Customers at Single Family Dwellings to whom it provides Refuse Carts, with a ninety-six (96) gallon Cart for Collection of commingled green waste (a "Green Waste Cart") at no additional charge. Any Customer requesting a smaller Green Waste Cart(s) shall be provided with a sixty-four (64) gallon or thirty-five (35) gallon Green Waste Cart(s) by Contractor instead of the standard ninety-six (96) gallon Cart noted above. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one or more additional Green Waste Carts at no additional charge. Contractor shall Collect Green Waste placed in Green Waste Carts for Collection from each Customer on the same day as such Customers' Refuse Cart is Collected, using an automated collection process. Customers shall be directed to place Green Waste Carts in the same location for Collection as Refuse Carts.

8.2.6 Multi-Family Dwelling Customers

Contractor shall comply with all requirements applicable to Commercial Customers, set forth below, in connection with Multi-Family Dwellings, and further shall comply with the specific provisions contained herein related to such Dwellings. Contractor shall provide all Customers at Multi-Family Dwellings with Bins meeting the minimum standards set forth in Exhibit B for the Collection of mixed Solid Waste ("Refuse Bins"), and shall Collect all Solid Waste placed therein for Collection not less than once per week, at rates that do not exceed the maximum rates set forth in Exhibit A. Contractor shall provide the number of Bins reasonably needed for Solid Waste Collection at each Premises at which Multi-Family Dwellings exist, bearing in mind both the number of Dwellings and space limitations. Contractor shall endeavor to

provide at least one (1) Refuse Bin for every ten (10) Dwelling Units located at each Multi-Family Dwelling. If unwanted by specific circumstances, and upon written approval of the City Manager, at any given Multi-Family Dwelling Refuse Carts may be utilized instead of Refuse Bins and the number of Refuse Carts shall correspond with the number of Dwelling Units in the Multi-Family Dwelling. In addition, if warranted by specific circumstances, and upon written approval of the City Manager, the minimum number of Refuse Bins/Carts designated for Multi-Family Dwellings may be adjusted. Rates for Customers at Multi-Family Dwellings receiving Refuse Carts shall not exceed the maximum rates set forth on Exhibit A for residential Cart service.

The size of Refuse Bins utilized, and the frequency of their Collection, shall be mutually agreed upon by Contractor and its Customers, except that Collection shall occur not less than one time per week and City shall have the right to impose minimum requirements for Bin sizes and more frequent Collection should it determine such action is needed to protect public health, safety and welfare. In the event of any dispute as to the adequacy of the number of Bins at any given Multi-Family Dwelling, the City Manager shall have the ability to approve the number of Refuse Bins used at such location. In the event extra pickups are required at a Multi-Family Dwelling in any given month, Contractor may charge the Person who manages or owns the Multi-Family Dwelling for such pickups an amount that does not exceed the maximum rate for "extra dumps" as set forth in the attached Exhibit A.

8.2.7 Multi-Family Dwelling Recycling Program

Contractor shall offer and provide a recycling program to all Customers at Multi-Family Dwellings (the "Multi-Family Dwelling Recycling Program") that at a minimum meets the standards required under AB 341. Contractor's Multi-Family Dwelling Recycling Program is more fully set forth in Exhibit C. Contractor shall be responsible for ensuring that its Multi-Family Dwelling Recycling Program achieves the required diversion rates specified in this Agreement and may be required to modify its program from time to time, at no additional cost to the City or Customers, to meet such diversion requirements.

Contractor shall produce, keep current, and provide public information specifically outlining its Multi-Family Dwelling Recycling Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in City.

[BELOW WILL BE DELETED IF AWARDED CONTRACT RESULTS IN MIXED WASTE PROCESSING]

Contractor may charge rates that do not exceed the maximum rates set forth on Exhibit A for Collection of recycling Containers pursuant to its Multi-Family Dwelling Recycling Program. Contractor shall also assist the City in identifying Customers at Multi-Family Dwellings that are not in compliance with the recycling requirements set forth in AB 341. Contractor's Multi-Family Dwelling Recycling Program shall at a minimum include the following. First, Contractor shall have a representative conduct a site visit for each Customer at a Multi-Family Dwelling that does not receive Collection service for Recyclable Materials from Contractor for the purpose of establishing said service. All of the Customers shall be contacted within the first six (6) months from the Effective Date of this Agreement, and Contractor shall, every six (6) months, provide to City an updated log of the above site visits that at a minimum includes: (1) the name and address of the Customer; (2) the date of the site visit; (3) the name and phone number of the person contacted; and (4) the reason provided by Customer for not establishing a recycling program.

Contractor shall provide City with the following three (3) lists: (1) Customers at Multi-Family Dwellings participating in Contractor's Multi-Family Dwelling Recycling Program; (2)

Customers at Multi-Family Dwellings reporting to Contractor that they achieve recycling via an in-house or third party recycling program that meets the requirements under Applicable Laws; and (3) Customers at Multi-Family Dwellings without a known recycling program. The foregoing three lists shall at a minimum: (1) state the Customer's name, address, and contact information; (2) indicate whether the Customers are subject to the State's recycling requirements under AB 341; and (3) provide details on the Solid Waste Collection service Customer receives from Contractor, including the quantity and type of Containers, frequency of Collection, and recycling services (if applicable).

In addition to the above, Contractor shall visit all new Customers at Multi-Family Dwellings within two weeks from when the new service is commenced. Contractor shall also conduct on-site visits to Customers at Multi-Family Dwellings throughout the Term of this Agreement to implement new or optimize the existing Multi-Family Dwelling Recycling Program.

8.2.8 Bulky Item Service for Single Family Dwellings

Contractor shall provide Bulky Item Collection services to residents living at all Single Family Dwellings in City on an on-call basis. The Bulky Item Collection service set forth in this Section shall only apply to Bulky Items generated at the Dwelling Unit at which Customer calling for service resides and is limited to up to four (4) items per scheduled pick up per week. In order to receive such service, residents shall provide Contractor with notice by phone of the number and type of Bulky Items to be collected. Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than three (3) business days from the date of Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining its Bulky Item Collection service, which shall specifically include the annual publication and distribution of a brochure describing this service to residents of all Single Family Dwellings in City. Contractor may charge rates for the Collection of each Bulky Item that do not exceed those set forth on Exhibit A.

8.2.9 Bulky Item Service for Multi-Family Dwellings

Contractor shall provide Bulky Item Collection service to Multi-Family Dwellings (where five (5) or more Dwelling Units exist on a single Premises) in the same manner as to other Commercial Premises as set forth in Section 8.3.3 below. Contractor shall produce, keep current, and provide public information specifically outlining its Bulky Item Collection service, which shall specifically include the annual publication and distribution of a brochure describing this service to residents of all Multi-Family Dwellings in City.

8.2.10 Bulky Item Diversion

Bulky Items Collected pursuant to this Agreement may not be landfilled until the following hierarchy of diversion efforts has been followed by Contractor:

- a. Reuse as is (if energy efficient);
- b. Disassemble for reuse or Recycling;
- c. Recycle, Transformation, other means of diversion; and
- d. Disposal.

This hierarchy is intended to preclude the use of front or rear loading packer vehicles for Bulky Items unless the compaction mechanism is not used to compact the Bulky Items. The disposition of Bulky Items shall be tracked by Contractor and this information shall be included in

Contractor's quarterly reports to City.

8.2.11 Proper Handling of Bulky Items

Contractor shall properly handle all materials required to be collected as Bulky Items, including specifically items that require special handling pursuant to the Environmental Laws, such as materials that constitute "universal waste" and/or "e-waste."

8.3 Commercial Solid Waste Handling Services

8.3.1 Commercial Bins and Rolloff Boxes

Contractor shall provide all Customers at Commercial Premises ("Commercial Customers") with at least one Bin and/or Rolloff Box for Collection of mixed Solid Waste, and shall Collect all Solid Waste placed therein for Collection not less than once per week, at rates that do not exceed the maximum rates set forth in Exhibit A. Contractor shall provide additional Containers to Customers and shall provide additional Collections upon request, or as may be required by City's Municipal Code, health and safety requirements, or by the City Manager, and may charge rates for such services which do not exceed the maximum rates set forth in Exhibit A. Bins and Rolloff Boxes shall be Collected by Contractor from the location upon each Customer's property designated for their storage, and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by the Customer and Contractor.

8.3.2 Commercial Catts

As an alternative to the requirements of Section 8.3.1 and upon written approval of the City Manager, Contractor shall offer Collection in 96 gallon Refuse Carts to Commercial Customers that do not have space for, or do not generate enough waste to require the use of Bins for Collection. Rates for Customers at Commercial Premises (excepting Multi-Family Dwellings) receiving such service shall not exceed the maximum rates set forth on Exhibit A for Commercial Refuse Catts. Rates for Customers at Multi-Family Dwellings receiving such service shall not exceed the maximum rates set forth on Exhibit A for residential Cart service. If Contractor and Customer have a disagreement as to whether a Refuse Cart is appropriate, or if City determines the Collection in a Refuse Cart causes health and safety or other concerns, the City Manager shall make the final determination as to whether Collection in a Refuse Cart may occur.

8.3.3 Commercial Bulky Item Service

Contractor shall provide unlimited Bulky Item Collection services to Commercial Customers on an on-call basis. Contractor may charge rates for such services which shall not exceed the maximum rates set forth in the attached Exhibit A. Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining the Bulky Item pick-up service. Bulky Items Collected pursuant to this Section are subject to the diversion and handling requirements set forth in Sections 8.2.11.

8.3.4 Commercial Recycling Services

Contractor shall offer and provide a commercial recycling program (the "Commercial Recycling Program") that at a minimum meets the standards required under AB 341. Contractor's Commercial Recycling Program is more fully set forth in Exhibit D. Contractor shall be responsible for ensuring that its Commercial Recycling Program achieves the required diversion rates specified ~~64~~

this Agreement and may be required to modify its program from time to time, at no additional cost to the City or Customers, to meet such diversion requirements.

Contractor shall produce, keep current, and provide public information specifically outlining its Commercial Recycling Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in City.

[BELOW WILL BE DELETED IF AWARDED CONTRACT RESULTS IN MIXED WASTE PROCESSING]

Contractor may charge rates that do not exceed the maximum rates set forth on Exhibit A for Collection of recycling Containers pursuant to its Commercial Recycling Program.

Contractor shall assist the City in identifying Commercial Customers that are not in compliance with the recycling requirements set forth in AB 341. Contractor's Commercial Recycling Program shall at a minimum include the following. First, Contractor shall have a representative conduct a site visit for each Commercial Customer that does not receive Collection service for Recyclable Materials from Contractor for the purpose of establishing said service. All of the Customers shall be contacted within the first six (6) months from the Effective Date of this Agreement. Contractor shall, every six (6) months, provide to City an updated log of the above site visits that at a minimum includes: (1) the name and address of the Customer; (2) the date of the site visit; (3) the name and phone number of the person contacted; and (4) the reason provided by Customer for not establishing a recycling program.

Six (6) months after the Effective Date of this Agreement Contractor shall provide City with the following three (3) lists: (1) Commercial Customers participating in Contractor's Commercial Recycling Program; (2) Commercial Customers reporting to Contractor that they achieve recycling via an in-house or third party recycling program that meets the requirements under Applicable Laws; and (3) Commercial Customers without a known recycling program. The foregoing three lists shall at a minimum: (1) state the Customer's name, address, and contact information; (2) indicate whether the Customers are subject to the State's recycling requirements under AB 341; and (3) provide details on the Solid Waste Collection service Customer receives from Contractor, including the quantity and type of Containers, frequency of Collection, and recycling services (if applicable).

In addition to the above, Contractor shall visit all new Commercial Customers within two weeks from when the new service is commenced. Contractor shall also conduct on-site visits to Commercial Customers throughout the Term of this Agreement to implement new or optimize the existing Commercial Recycling Program.

8.3.5 Scout Services

Certain Commercial Premises within the City Limits are uniquely configured such that a smaller vehicle may be needed to retrieve a Customer's Container in order for a regular Collection vehicle to service the Container ("Scout Service"). Upon request by Customer or City, Contractor shall provide Scout Service to the designated Commercial Premises and Contractor may charge rates for such Scout Service which shall not exceed the maximum rates set forth in the attached Exhibit A. Any dispute as to whether a Commercial Premises requires the use of Scout Service shall be resolved by the City Manager whose determination shall be final. Contractor may not charge a push-out fee for manually maneuvering Containers into place for Collection.

8.4 Other Collection Programs As May Be Required by Law

In the event CalRecycle, or any federal, state, or local law or regulation, imposes upon Ci65

or Contractor a requirement for the implementation of any source separated program for the Collection of any waste material (whether or not meeting the definition of Solid Waste hereunder) not already covered by this Agreement, whether Commercial or Residential in nature, Contractor shall design and present a program to City to comply with such requirement, which program shall meet the City Manager's reasonable approval ("Proposed Program"). Except with respect to programs which are required due to Contractor's failure to achieve the diversion requirements set forth herein (which programs are subject to Section 8.6.5), at such time as (if) any such Proposed Program is implemented, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit A in order to compensate Contractor for implementing said Proposed Program.

In determining a fair and reasonable rate adjustment, City may consider the cost to Contractor in providing the Proposed Program. If City and Contractor cannot agree on a rate adjustment for the Proposed Program within ninety (90) days from the date City first requests Contractor design and present the Proposed Program to City, then City may enter into an agreement with another party for the services that would be provided by Contractor's Proposed Program and Contractor agrees that the Proposed Program shall be exempt from the exclusivity granted to Contractor in this Agreement.

Contractor shall present the Proposed Program within thirty (30) days of a request to do so by City. The Proposed Program shall include a detailed description of the following: (1) Containers to be used and method of Collection; (2) equipment to be used (e.g., vehicle number, models, capacity, and age); (3) number of employees required for the Proposed Program; (4) materials to be Collected; (5) promotional and public education materials; and (6) a one-year projected financial analysis of the Proposed Program's operations in an operating statement format, including documentation of the key assumptions underlying the projections, and the support for those assumptions.

8.5 Temporary Services

Contractor shall provide Temporary Services on an on call basis to any Customer requesting such service pursuant to the following conditions:

(A) Bins and Rolloff Boxes utilized in connection with Temporary Services shall meet the minimum standards set forth herein.

(B) No charges excepting rates not exceeding the maximum rates set forth in the attached Exhibit A related to Bins or Rolloff Boxes utilized in connection with Temporary Services shall be imposed by Contractor, unless approved in accordance with Section 8.8 (Special Services).

(C) Temporarily placed three (3) cubic yard Bins may be used for small cleanup type projects at Single Family and Multi-Family Dwellings; provided, however, Bins used for such purposes shall not remain at the same address for a period that exceeds four consecutive weeks. Bins used for Temporary Service shall not remain in any public rights-of-way for a period exceeding two consecutive weeks. Bins may not be placed in any public rights-of-way so as to create a safety hazard or so as to block any right-of-way to a degree that it is not reasonably usable. Bins placed in City's rights-of-way shall be subject to such requirements as may be imposed by City, and at a minimum shall be equipped with reflectors, reflective tape, reflective paint, or other reflective devices which, to the satisfaction of the City Manager, make such Bins reasonably visible to vehicle traffic at night.

(D) Contractor shall work with Customers requesting construction and

demolition debris Collection services to ensure that requirements under the City's ordinance regulating the recycling and disposal of construction and demolition waste are met, including, but not limited to, ensuring that each covered project meets the minimum required diversion level. Contractor agrees to comply with all provisions of the ordinance, as may be amended from time to time, and to provide services for construction contractors in City as may be contemplated by any such ordinance at no charge (such as assistance in preparing plans for the collection, recycling and disposal of construction and demolition waste in accordance with this Agreement and providing data for reporting to the City).

(E) In addition to complying with any related requirements that may exist in any ordinance which may be in effect in City regulating construction and demolition waste, including specific diversion levels that may be required by any such ordinance, Contractor shall make all reasonable efforts to recycle all construction and demolition waste it collects, especially to the degree such loads contain clean inert materials. Towards this end, Contractor shall make available to Customers involved in construction separate containers within which to collect different types of marketable materials, such as dirt, steel, concrete and wood.

8.6 Recycling Obligations and Public Education Program

8.6.1 Minimum Requirements for Recyclable Materials, Green Waste and Rolloff Boxes

Once a green waste program is developed Contractor shall utilize a truck dedicated for the purpose of collecting green waste from customers, such that Green Waste which has been separated prior to collection, once collected, is not commingled with other Solid Waste (including Recyclable Material). Similarly, Contractor shall utilize a truck dedicated for the purpose of collecting recyclable materials, such that recyclable material collected in recycling carts or recycling bins, once collected, is not commingled with other Solid Waste (including Green Waste). All material collected by Contractor in recycling carts or bins pursuant to this Agreement shall be delivered to a properly permitted facility for recycling and reuse purposes. All Green Waste separated prior to collection and thereafter collected by Contractor pursuant to this Agreement (including specifically materials Collected in Green Waste Carts and Holiday Trees) shall be delivered to a properly permitted facility for recycling, mulching, composting, or alternative uses for which diversion credit is provided as may be approved by CalRecycle. All Rolloff Boxes, whether for Commercial Customers or Temporary Service shall be delivered to a properly permitted facility for recycling and reuse purposes.

8.6.2 Extent of Applicable Franchise Rights

Nothing in this Agreement shall be construed as giving Contractor the right to Collect Recyclable Material which has not been discarded and placed for Collection by Contractor in the location designated for that purpose.

8.6.3 AB 939 Obligations, Guarantee, and Indemnification

8.6.3.1 Warranties and Representations

Contractor warrants and represents that it is aware of and familiar with City's waste stream, and that it has the ability to and will provide sufficient programs and services to ensure City will meet or exceed the diversion goals (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in AB 939 and AB 341,

and all amendments thereto, and that it shall do so without imposing any costs or fees other than those set forth on the attached Exhibit A (including if it implements new programs to achieve such goals which are not called out herein). Stated otherwise, Contractor acknowledges that it is responsible for ensuring that its various programs achieve the diversion requirements hereunder, and that it may be required to modify its programs from time to time, at no additional cost to the City or Customers, to meet such diversion requirements. Contractor specifically acknowledges that the City's current mandated diversion goal as set forth pursuant to the Applicable Laws is 30%.

8.6.3.2 Mutual Cooperation.

City and Contractor shall reasonably cooperate in good faith with all efforts by each other to meet City's diversion and other compliance requirements imposed by AB 939, AB 341 and other Applicable Laws. In this regard, City's obligations shall include, without limitation, making such petitions and applications as may be reasonably requested by Contractor for time extensions in meeting diversion goals, or other exceptions from the terms of AB 939, AB 341 and other Applicable Laws.

8.6.3.3 Waste Reduction and Program Implementation

Contractor shall implement the programs identified in the Land Use Element related to solid waste of the City's General Plan immediately upon the Effective Date hereof, and will implement any programs required by any amendments or modifications thereto. Contractor shall provide City with monthly, quarterly and annual written reports in a form adequate to meet City's AB 939 and AB 341 related filing and reporting requirements to CalRecycle and to the County of Siskiyou throughout the Term of this Agreement wherein City's performance under the above programs shall be set forth in detail. Contractor shall be responsible to prepare, or assist City with the preparation of, all reports and other information as may be required by any agency, including specifically, the State of California, in order to comply with AB 939 and/or AB 341. Contractor shall reimburse City for any costs City incurs in appearing before CalRecycle and/or the County of Siskiyou in relation thereto.

8.6.3.4 Guarantee and indemnification

Contractor warrants and guarantees that it will carry out its obligations under this Agreement such that: (i) both it and City will at all times be in compliance with the requirements of all Applicable Laws including specifically AB 939 and AB 341, and (ii) City will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, or any other requirements) set forth in AB 939, AB 341 and all amendments thereto. In this regard, Contractor agrees that it will, in addition to any other requirement contained herein, at its sole cost and expense:

(A) to the extent legally permitted, defend, with counsel approved by City, indemnify, and hold harmless City and City's officials, employees, and agents from and against all fines and/or penalties and other liabilities which may be imposed by CalRecycle or any other regulatory agency if: (1) Contractor fails or refuses to timely provide information relating to its operations which is required pursuant to this Agreement or any Applicable Laws and such failure or refusal prevents or delays City from submitting reports required by Applicable Laws in a timely manner; or (2) the source reduction and recycling goals, diversion goals, program implementation requirements, or any other requirements of Applicable Laws are not met with respect to the waste stream Collected under this Agreement;

- (B) assist City in responding to inquiries from CalRecycle;
- (C) assist City in preparing for, and participating in, any review of City's General Plan regarding solid waste pursuant to Applicable Laws;
- (D) assist City in applying for any extension, including under Public Resources Code Section 41820, if so directed by City;
- (E) assist City in any hearing conducted by CalRecycle relating to City's compliance with Applicable Laws;
- (F) assist City with the development of and implement a public awareness and education program that is consistent with the City's General Plan in relation to solid waste, as well as any related requirements of Applicable Laws;
- (G) provide City with recycling, source reduction, and other technical assistance related to compliance with the Applicable Laws;
- (H) defend, with counsel acceptable to City, City and City's officials, employees, and agents against the imposition of fines and/or penalties, or any other liabilities, issued by CalRecycle pursuant to AB 939;
- (I) be responsible for and pay, any fees, penalties or other costs imposed against the City by CalRecycle, and indemnify and hold harmless City from and against any fines, penalties, or other liabilities, levied against it for violation of AB 939's diversion requirements, or violation of any other provision of the Applicable Laws, arising from or in any way related to Contractor's performance of its obligations under this Agreement.

8.6.4 Waste Generation/Characterization Studies

Contractor acknowledges that City must perform Solid Waste generation and disposal characterization studies periodically to comply with the requirements of AB 939. Contractor agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed to satisfy the requirements of AB 939.

8.6.5 Implementation of Additional Diversion Services

In the event City does not meet the current diversion goal of 30% imposed by AB 939 or diversion requirements as modified under AB 341 when applicable with respect to all waste generated in City, City may direct Contractor to perform additional services (including the implementation of new diversion programs) or modify the manner in which it performs existing services, and Contractor agrees to do so at no additional charge. Pilot programs and innovative services which may entail new Collection methods, and use of new or alternative waste processing and disposal technologies are included among the kinds of changes which City may direct.

8.6.6 Processing of Bin and Roll-Off Box Solid Waste

[IF MIXED WASTE RECYCLING IS PROPOSED]

Contractor shall, prior to landfilling, process all mixed waste from Bins or Rolloff Boxes to recover Recyclable Materials. The material recovery facility used to process the mixed waste mu69

maintain compliance with CalRecycle standards for a high diversion facility, as defined by CalRecycle, for the purpose of meeting mandatory commercial recycling requirements for mixed waste. Contractor shall be required to achieve the minimum recovery rate for processing mixed waste which is the higher of [percentage to be filled based on proposal] or as required by CalRecycle to meet the above standard. The minimum recovery rate shall apply solely to the processing of mixed waste and excludes all source separated waste, including waste Collected from construction and demolition projects, as well as source separate Recyclable Materials and Green Waste.

8.6.7 Additional Services

As part of the consideration for entering into this Agreement, Contractor shall provide the following additional services at no charge, and shall not adjust its rates to Customers to offset costs incurred in providing any of the following services:

8.6.8 Monitoring and Cleaning of Bin Enclosures

Contractor shall work with the City Manager in identifying and resolving continual problems with overflowing Bins or Bin enclosures, and/or other unsanitary conditions caused by Customers. Contractor shall clean out any overflowing Bins or Bin enclosures within City within twenty-four (24) hours of notification by City. Contractor may bill Customers for any such services when they are required by City at rates subject to approval by City.

8.6.9 Public Service Calls From City Departments

Contractor shall, within twenty-four (24) hours respond to calls from City's Maintenance and Code Enforcement Divisions and from its Police Department, to provide Containers for and/or dispose of Bulky Items and other Solid Waste as a result of illegal or unauthorized dumping, or other Code enforcement matters, occurring within City. Contractor agrees that if requested to provide such services in connection with abatement activities for which reimbursement is sought from the property owner by City through abatement liens or otherwise, Contractor will provide billing information sufficient for City to include it in its liens, and Contractor will be paid at such time as the abatement lien is paid, or reimbursement is otherwise obtained by City from the property owner. Upon receipt of a call for service from City made pursuant to this Section, Contractor shall advise City within one day as to when service will be provided, and unless otherwise agreed by City service shall be provided within three (3) days.

8.6.10 Collection at City-Sponsored Events

Contractor shall provide Solid Waste and Recyclable Materials Collection at all City-sponsored or supported non-profit events. The number, type and service requirements for these events may vary from year to year. This service shall include providing servicing and storing containers to collect and dispose of all Solid Waste collected, and providing, servicing and storing containers to collect and process source-separated Recyclable Materials. Contractor shall provide these services at no cost to the City or the event sponsors.

8.6.11 Recycling Assistance for Special Events

Contractor shall assist persons designated by City (whether City employees or private individuals) who are responsible to coordinate special events or events in large venues (such as concerts or sporting events) in the implementation of recycling programs. Contractor shall be responsible to prepare and submit to City a "waste reduction and recycling plan" prior to such

events, and within 30 days following each such event shall submit a waste characterization report listing the amount of each material collected for disposal and recycling at the event.

8.6.12 Holiday Trees

For at least two weeks following December 25th each year, Contractor shall, free of charge, pick up all Holiday Trees placed out for Collection by Customers. Such trees shall not be comingled with other Solid Waste and shall be delivered to a proper facility for processing, rather than disposal, as required by the provisions hereof.

8.6.13 Handling of Electronic Waste

Contractor shall Collect electronic waste, or "e-waste," and/or universal waste, from any Customer in the manner set forth herein, but shall handle and dispose of such materials in accordance with all Applicable Laws.

8.6.14 City-Wide Clean Up Events

Contractor shall promote and conduct at least two Bulky Item and Solid Waste drop-off events (clean-up days) per year at no cost to City. Contractor shall obtain prior approval for the date of the events (typically on a Saturday) from City, and for the location of the events. On event day, Contractor shall accept all Solid Waste and Bulky Items dropped off by City residents. Residency will be proved by driver's license, utility bills, or other method approved by City. Contractor may impose the following restrictions on material Collected:

- No single item that cannot be handled by two workers will be accepted.
- The following items will not be Collected: Hazardous Substances, Hazardous Waste, including waste oil or anti-freeze; concrete and dirt; excepting that all materials defined as Bulky Items, including televisions, monitors and other items referred to as "e-waste," shall be Collected by Contractor and be properly handled in accordance with all Applicable Laws.

Contractor shall record by class and weight (in tons) the Solid Waste Collected during the cleanup events. Contractor shall record the types and weights (in tons) of Solid Waste diverted during these cleanups from the landfill through recycling, reuse, Transformation or other means of diversion.

8.7 Special Services

Contractor may provide special pickup procedures or services in addition to the services described herein for Customers who request or require such services at reasonable rates established by Contractor, which rates are subject to approval by the City Manager. Contractor shall notify the City Manager of any such services prior to such time as they are provided in order to allow the City an opportunity to conduct necessary inspections, review the proposed rate, and impose appropriate regulations.

SECTION 9. MINIMUM STANDARDS FOR CONTRACTOR'S SOLID WASTE HANDLING SERVICE COLLECTION VEHICLES

9.1 General

Contractor shall provide vehicles for the Collection of Solid Waste ("Collection Vehicles") that are sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Contractor is expressly obligated to provide such Collection Vehicles and routes as are required to meet the service standards set forth herein. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies.

9.2 Specific Requirements

Each Collection Vehicle utilized by Contractor in the performance of this Agreement shall meet the following minimum standards:

(A) Each Collection Vehicle shall be registered with the California Department of Motor Vehicles.

(B) Each Collection Vehicle shall be inspected regularly by Contractor to ensure it meets the requirements of the California Vehicle Code and the California Highway Patrol. Contractor shall provide copies of its Biannual Inspection of Terminal ("BIT") inspection reports to City within 30 days of its receipt of such reports and shall make all records related to its vehicles, including Contractor's maintenance records, available to City upon request by the City Manager.

(C) Each Collection Vehicle shall be equipped with devices capable of covering every open section of the vehicle in which Solid Waste may be placed and, while operating upon the public rights-of-way, shall be covered so as to prevent any Solid Waste from falling or being blown or otherwise dislodged from the vehicle.

(D) Each Collection Vehicle shall be continuously maintained so as to both: (1) meet the highest industry standards with regards to efforts to prevent liquid from leaking and to the degree possible ensure each Collection Vehicle is "watertight" and "leak-proof" and, (2) at all times comply with the provisions of all laws and regulations including the Vehicle Code and any applicable NPDES permit, with regard to materials leaking from Collection Vehicles. Contractor shall be responsible to promptly clean any spillage or Solid Waste that leaks or otherwise escapes the vehicle.

(E) Each Collection Vehicle shall be painted periodically, which shall include all necessary body work, and shall be regularly cleaned, so that such vehicles do not become unsightly, as determined by the City Manager. Each vehicle shall be painted with Contractor's colors and identifying information as required herein.

(F) Contractor's name, local or toll free telephone number, and a vehicle number shall be visibly printed or painted in letters not less than five (5) inches in height on both sides of each Collection Vehicle. Any other information or signage printed, painted, or displayed on Contractor's Collection Vehicles, when such vehicles are providing Collection services within City Limits, shall be subject to approval by City.

(G) Each collection vehicle shall be maintained in a clean and sanitary condition both inside and out. Each collection vehicle shall carry a broom, shovel, operable fire extinguisher, and shall be equipped with a communication device sufficient to allow the driver to communicate directly with Contractor's dispatcher and/or main office.

(H) Each Collection Vehicle shall be kept in good repair and working order, and shall be equipped with appropriate safety equipment, including any new safety related

technologies that become standard in the waste industry, and at a minimum shall have a video monitor based back-up system, or its equivalent. Contractor shall keep a sufficient supply of replacement parts and equipment on hand to ensure adequate vehicle maintenance and timely and continuous performance of the services contemplated by this Agreement.

(I) Contractor shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions upon Collection Vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall keep accurate records of all Collection Vehicle maintenance and repair, recorded according to date and mileage, including signed verifications that repairs and maintenance has been properly performed, and shall make such records available to City upon request.

(J) No Collection Vehicle shall be utilized if it is leaking brake, hydraulic, or other fluids, and Contractor shall clean up any leaks or spills from their vehicles per the NPDES permit in effect at the time. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such cleanup efforts.

(K) Upon request, Contractor shall furnish City a written inventory of all equipment, including Collection Vehicles, used in providing service pursuant to this Agreement. This inventory shall list all equipment by manufacturer, ID number, date of acquisition, type and capacity.

(L) Contractor shall utilize Collection Vehicles of a size, weight, nature, and type so as to not be unreasonably intrusive on the community with respect to noise, emissions, maneuverability, safety, and other factors and to avoid or minimize pavement damage and wear and tear of the street or adjacent properties, as approved by the City Manager.

(M) Contractor shall not load Collection Vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local laws or regulations. Noise levels of equipment used for Collection shall not exceed 75db (seventy-five decibels) when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground.

(N) All Collection Vehicles used in the City shall be no more than ten (10) years of age at any time during the Term.

9.3 Costs of Operation and Damages

Contractor shall be responsible for any costs incurred in connection with ensuring all Collection Vehicles comply with all Applicable Laws, including without limitation any such laws and regulations that may now exist or hereinafter be adopted relating to noise, fuels, emission standards, or weight limits.

9.4 City Inspection

City may cause or require any Collection Vehicle used in performance of this Agreement to be inspected and tested at any time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the provisions of this Agreement.

9.5 Correction of Defects and Removal of Vehicles from Use within City

Contractor agrees to immediately remove from service, and replace or repair, to the City's satisfaction, any Collection Vehicle which City determines to be of unsightly appearance, unsafe, unsanitary, leaking, out of compliance with any law or regulation or this Agreement, or otherwise in an unsatisfactory operating condition; and any such vehicle shall not be returned to service until the City Manager gives his written consent for its return.

**SECTION 10.
CONTRACTOR'S SOLID WASTE HANDLING
SERVICE PERSONNEL**

10.1 Uniforms

Each of Contractor's Collection employees shall wear a clean uniform bearing Contractor's name.

10.2 Identification of Employees

Contractor shall provide identification badges, cards or similar devices, for all of its employees, and all authorized subcontractors, who may make personal contact with residents of the City. City may require Contractor to notify Customers yearly of the form of said identification.

10.3 Employee List

Contractor shall provide a list of current employees and authorized subcontractors to City upon request.

10.4 Driver's License

Each employee operating a vehicle as part of his or her duties shall, at all times, carry a valid operator's license for the type of vehicle he or she is operating. All employees who may have contact with Customers in the course of performing their duties shall possess the ability to communicate effectively with Customers.

10.5 Screening of Field Employees

Contractor shall make reasonable efforts to determine if its employees working in the field (i.e., drivers of Collection Vehicles, and employees otherwise involved in Collection at Customer Premises) have been convicted of a felony, and shall identify any such employees known to it to City.

10.6 Discontinued Use of Unsatisfactory Employees

No employee shall continue to have any involvement whatsoever with regard to any work in anyway relating to or arising from this Agreement if City gives notice to Contractor that such employee is determined by City to be discourteous, disorderly, inefficient, or otherwise objectionable (provided the term "otherwise objectionable" shall not permit City to "ban" an employee for reasons that violate public policy; and, further, City shall give a reason for requesting the "ban" of any employee from engaging in work related to this Agreement).

10.7 Training and Legal Compliance

Contractor shall provide operating and safety training that meets minimum OSHA standards for all personnel, and shall comply with all laws and regulations applicable to its employees and personnel.

10.8 Customer Service

10.8.1 Office Hours: Local Participation

Contractor shall maintain an office for communication with the public that at a minimum will be open from 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 p.m. Saturday, holidays excepted. At least one responsible and qualified representative of Contractor, capable of communicating in English, shall be present and available during all times that an office is required to be open as noted above ("Office Hours"), for personal communication with the public regarding billing, complaints, customer service inquiries, etc. and a similarly qualified person shall be available for communication with the public by phone during any times other than Office Hours when Collection is occurring.

Contractor shall endeavor to establish a local presence in the City. Contractor may achieve such presence by joining, and maintaining a membership in, the Chamber of Commerce, and by otherwise participating in the local community, such as by sponsoring local events, regularly attending City events and City Council meetings.

10.8.2 Telephone Customer Service Requirements

10.8.2.1 Toll Free Number

Contractor shall maintain a toll free telephone number that rings at an office within Siskiyou County at all times during Office Hours. Personnel will be available during Office Hours to assist Customers with telephonic inquiries. All such personnel shall be polite and responsive, and shall be sufficiently knowledgeable, and have the authority to respond and/or advise Customers seeking assistance. Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Contractor shall provide City with a 24-hour emergency number to a live person, not voice-mail.

10.8.2.2 Call Responsiveness

Contractor shall make reasonable attempts to answer all phone calls. A messaging service shall be available for customers to leave a message. Contractor shall make at least three attempts within the next twenty-four (24) hour period to return the call. If Contractor is unsuccessful in contacting the Customer after following this procedure, it shall send a letter to the caller indicating its efforts.

10.8.3 Complaint Documentation

All service complaints shall be directed to Contractor. Contractor shall log all complaints received and said log shall include the date and time the complaint was received, the name, address and telephone number of the complaining party, a description of the complaint, the name of the employee recording the complaint and the action taken by Contractor to respond to and remedy the complaint. All written Customer complaints and inquiries shall be date-stamped when

received. All complaints shall be initially responded to within one (1) business day (Monday through Friday) of receipt. Contractor shall log action taken to respond to and remedy the complaint. Daily logs of complaints shall be retained for a minimum of twenty-four (24) months. All Customer service records and logs kept by Contractor shall be available to City upon request. City shall, at any time during regular Office Hours, have access to Contractor's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints. Contractor shall provide to City on a monthly, quarterly, and annual basis, a complaint log, in a form satisfactory to the City, that includes all of the complaints logged pursuant to this Section, the complainant and the resolution.

10.8.4 Resolution of Customer Complaints

Disputes between Contractor and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding. Should Contractor and Customers not be able to establish a mutually acceptable fee to be charged for special services as set forth in Section 8.8, the matter shall be dealt with pursuant to this Section, be determined by the City, and the City's decision shall be final. Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Contractor. Nothing in this Section is intended to affect the remedies of third parties against Contractor.

10.8.5 Government Liaison

Contractor shall designate in writing a "Government Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer complaints. City shall have the right to approve Contractor's choice for a liaison. It is anticipated that the Government Liaison will regularly attend City events involving community outreach programs and will routinely attend City Council meetings.

10.9 Education and Public Awareness

10.9.1 General

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of AB 939 and AB 341. Accordingly, Contractor agrees to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse and recycle Solid Waste and to cooperate fully with City in this regard.

10.9.2 Written Program Materials

Contractor shall maintain a program of providing information relevant to the need and the methods to reduce, reuse and recycle Solid Waste, and Contractor upon request from City, may include such information along with bills provided to Customers. All public education materials shall be approved in advance by City. Contractor shall keep a record of all promotional and public education materials utilized, and shall provide semi-annual reports summarizing its public outreach and education efforts.

10.9.3 Public Outreach

When appropriate, Contractor shall conduct school assemblies and promote recycling through presentations and educational materials to the Chamber of Commerce, homeowners associations, construction contractors and other civic groups. Contractor shall also provide articles

on recycling for local newsletters.

10.9.4 On-going Education Requirements

In order to promote public education, in addition to any other materials it develops, Contractor shall create the following public education materials and programs at its expense, which will be distributed as indicated below. All of these materials and programs shall be produced and/or available in both English and Spanish languages, and all written materials shall be approved by City in advance of distribution, and shall bear the City seal, unless otherwise approved by the City.

10.9.4.1 Quarterly Newsletter

Each year during the Term of this Agreement, Contractor shall produce and provide to the City four (4) quarterly newsletters or articles to be included in the City newsletter. The content of each quarterly newsletter or article shall be determined by the City Manager.

10.9.4.2 Annual Notices

Not less than once each year during the Term of this Agreement, Contractor shall prepare and distribute to each Customer a brochure providing relevant information about Contractor's services, including, at a minimum: information regarding access to and use of available services; Collection schedules; holiday Collection schedules; information about mandatory commercial recycling and program offerings; Contractor's Customer service numbers; procedures to begin and terminate services; and information promoting and explaining available programs, such as Recycling, Green Waste, Holiday Tree and Bulky Item Collections, the availability of Household Hazardous Waste and e-waste Collection, and the proper handling and disposal of such wastes.

10.9.4.3 How-To Brochure

Contractor will prepare and distribute a brochure packet to new Customers when they start service. This packet will contain updated information on how to use the Contractor-provided Carts, when, where and how to place Solid Waste for Collection, and who to contact with service or Billing questions.

10.9.4.4 Corrective Action Notice

Contractor shall develop a corrective action notification form for use in instances where a Customer sets out inappropriate materials for Collection, that explains the appropriate manner for disposal of such items.

10.9.4.5 Contractor Representative

Contractor shall retain on its staff an individual who shall as part of his or her job function routinely visit civic groups, school assemblies, and homeowners' associations, to promote and explain the Recycling and other programs that Contractor offers, and participate in demonstrations, and civic events.

10.9.4.6 Web Site Page

Contractor shall dedicate one page of its web site to City services, which shall include at least the following information: a listing of contact names and numbers for

Customer Service; Collection schedules, including holiday schedules; available programs, including Recycling, Green Waste, Holiday Tree and Bulky Item Collections; information about mandatory commercial recycling and program offerings; and the procedures to begin and terminate services. During the first six months following the implementation of new services hereunder, this web page shall also provide information explaining the new service, and the proper use of Carts. Contractor shall assist the City in establishing a link to this web page from the City's web site.

SECTION 11. CONTRACTOR'S CONSIDERATION

In addition to any other consideration set forth herein, as part of its consideration for entering this Agreement, and for the exclusive franchise, right and privilege to provide Solid Waste Handling Services within City as specified herein Contractor shall provide the following:

11.1 Reimbursement of Negotiation Costs

Contractor shall pay to City a one-time lump sum payment to reimburse the City for its actual staff expenses and out-of-pocket costs (including specifically consultant and legal fees) it incurred in connection with the Request for Proposals ("RFP") process for Solid Waste Handling Services, the negotiation of this Agreement, and ultimate award of this Agreement. City shall provide an invoice to Contractor for the amount due pursuant to this Section and the outstanding amount shall be paid by Contractor within thirty (30) days of being invoiced by City.

11.2 Administrative Cost Reimbursement

Within 30 days of executing this Agreement, and then on or before July 1 each year thereafter, Contractor shall make a payment to City in the amount more fully set forth in this paragraph intended to defray its administrative costs related to this Agreement (the "Administrative Cost Reimbursement"). City shall not be required to send Contractor an invoice for the Administrative Cost Reimbursement, and instead Contractor's obligation shall automatically become due within 30 days of executing this Agreement, and then on July 1 each year thereafter. The amount of the annual Administrative Cost Reimbursement shall be the sum of: (1) Five Thousand Dollars (\$5,000.00) [adjusted annually by the change in CPI as calculated under Section 24.3], intended for use with ongoing compliance review as noted in Section 27.3; plus (2) City's actual legal and consultant fees and out of pocket costs incurred in the administration of this Agreement, including fees and costs associated with analyzing new legislation, considering requests from Contractor (including specifically, without limitation, requests for rate increases), and otherwise analyzing issues that arise in connection with this Agreement. If the Administrative Cost Reimbursement is not paid by Contractor within thirty (30) days after the above stated due date, and in addition to any other remedy provided by law, Contractor shall pay to City a penalty in an amount equal to ten percent (10%) per month, or portion thereof, of the amount owing until paid.

11.3 Franchise Fee

Contractor shall pay to City, a franchise fee equal to four percent (4%) of Contractor's annual Gross Receipts each year, or portion thereof, during the entire Term of this Agreement (the "Franchise Fee"). Said Franchise Fee shall be paid to City monthly on or before the fifteenth (15th) day of each month. Should any such due date fall on a weekend or holiday in which the City's business offices are closed, payment shall be due on the first day thereafter in which the City's business offices are open. The amount of each payment shall be equal to four percent (4%)

of Contractor's Gross Receipts in the calendar month preceding the date payment was due. The Franchise Fee due hereunder shall apply to Gross Receipts of Contractor collected after the expiration of the Term hereof relating to Contractor's performance during the Term hereof. Franchise Fees shall be accompanied by a statement certified by an officer of Contractor attesting to the accuracy of the amounts paid, and setting forth the basis for their calculation in a manner acceptable to City.

11.4 Services at City Facilities

Contractor shall provide Collection services at all Premises owned and/or operated by the City, at no cost to City and shall provide Containers for such service as City deems appropriate for each of its various Premises (i.e., Carts, Bins or Rolloff Boxes). Such services shall be provided for all existing City facilities, as they may be expanded from time to time, as well as all new or additional facilities acquired/constructed during the Term hereof at no additional cost. Contractor shall carry out its obligations pursuant to this provision in a manner, and to a degree, approved by the City Manager.

11.5 Bulky Item Cost Reimbursement

Within 30 days of executing this Agreement, and then on or before July 1 each year thereafter, Contractor shall make a payment to City in the amount more fully set forth in this paragraph intended to defray its administrative costs related to Bulky Item pick-ups City performs (the "Bulky Item Cost Reimbursement"). City shall not be required to send Contractor an invoice for the Bulky Item Cost Reimbursement, and instead Contractor's obligation shall automatically become due within 30 days of executing this Agreement, and then on July 1 each year thereafter. The amount of the annual Bulky Item Cost Reimbursement shall be one thousand Dollars (\$1,000.00) [adjusted annually by the change in CPI as calculated under Section 24.3]. If the Bulky Item Cost Reimbursement is not paid by Contractor within thirty (30) days after the above stated due date, and in addition to any other remedy provided by law, Contractor shall pay to City a penalty in an amount equal to ten percent (10%) per month, or portion thereof, of the amount owing until paid.

SECTION 12. CHARGE FOR LATE PAYMENTS

In the event Contractor fails to timely make any of the payments provided for in this Agreement (whether reimbursements, Franchise Fees, payments of fees collected in connection with billing services, or otherwise), Contractor shall pay to City, as additional consideration, a sum of money equal to five percent (5%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting for, and collecting said

delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving the revenue. In addition, any amounts not paid to City by Contractor within sixty (60) days of the due date shall be subject to interest in the amount of ten percent (10%) per annum, calculated on a daily basis for each day such sums remain past due.

SECTION 13. CONTRACTOR'S BILLING SERVICES AND SYSTEMS

13.1 Billing

Contractor shall provide services pursuant to this Agreement at rates it sets, charges to, and collects from Customers; provided, however, Contractor's rates shall not exceed those set forth in the attached Exhibit A, which sets out the maximum rates that may be charged by Contractor for the various different service options that may occur hereunder, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. Contractor shall provide all Customers with itemized Bills, detailing charges for all services, including charges for late payments, as well as the period of service to which the Bill applies. Contractor acknowledges that it, and not Customers, is to pay a Franchise Fee and the other fees noted herein to City as consideration for this Agreement. Accordingly, Contractor's Bills shall not include separate itemization of a "Franchise Fee" or other similar designation relating to fees which Contractor is required to pay to City. Contractor shall reproduce and include in any Billing, at no additional cost, one page informational "inserts" provided by City.

Billings may be made on a quarterly basis in advance of, or subsequent to services being provided for all Customers at Single Family or Multi-Family Dwellings utilizing Carts for Collection, and on a monthly basis in advance for all other Customers. Premises ordering service after the first of the month or canceling service prior to the end of the month shall be charged on a prorated per-pickup basis.

13.1.1 Suspension of Service Due to Non-Payment

Except as provided below, Contractor may not discontinue service to Residential Customers for non-payment; City will assist Contractor in collecting past due payments through placing the late payments on the County's tax roll billing or through the use of a collection agency. Contractor may discontinue service to Customers as set forth in this Section. Customers who have not remitted required payments within thirty (30) days after the date of Billing shall be notified on forms approved by the City Manager. Said forms shall contain a statement that services may be discontinued fifteen (15) days from the date of the notice if payment is not made before that time. If payment is not made by the expiration of said fifteen (15) day period, Contractor may discontinue service to that Customer forty-eight (48) hours thereafter. Contractor shall resume Solid Waste Collection on the next regularly scheduled Collection day for any Customer whose service is discontinued upon receipt of payment of delinquent fees and any related service restart charges in accordance with the maximum rates set forth in Exhibit A, or at such sooner time as directed to do so by City. Contractor may not charge for service during any period in which service was suspended. Any delinquent fees or service charges to be imposed in connection with delinquent accounts shall be set by Contractor and be subject to City Manager approval. A deposit equal to the maximum rate for one month's service as set forth on Exhibit A, as such rates may be amended from time to time, may be required of accounts which have been discontinued for non-payment prior to re-instituting service at such accounts.

Notwithstanding the above, in the event of a Billing dispute and/or to avoid negatively impacting public health or safety, Contractor shall not suspend service to any Customer without the City's prior consent, and shall continue to provide service to any Customer if directed to do so by City without regard to the status of said Customer's account.

13.1.2 Unoccupied Premises

During any time when a Premises is unoccupied for more than forty-five (45) days, and Collection services are not provided by Contractor, Contractor shall not Bill such Premises for Solid Waste Collection. Contractor shall remove its Containers from any Premises after being notified by a Customer that service is to be cancelled as a result of the Premises being unoccupied.

The Customer at any such Premises shall be responsible to provide notice to Contractor to cease service due to a vacancy, as well as reasonable evidence pursuant to such guidelines as the City Manager is hereby authorized to develop, demonstrating the Premises was vacant for the period in question. Such Customers shall be entitled to a refund from Contractor for any amounts paid to Contractor for each thirty (30) day period during which the vacancy exists. Any Customer grievance regarding a claim that a Premises was unoccupied and received no service, and hence should not be Billed for a given period pursuant to this Section, may be appealed by the Customer to the City Manager whose decision shall be final. It is the intent of the Parties that a Contractor shall not be entitled to charge for services which are not needed or used. Accordingly, the time frame set forth in this Section is not intended to suggest that Contractor may bill Customers for up to 45 days of service in situations in which no service is needed or used due to a vacancy.

13.2 Minimum Requirements for Billing Statements

In addition to any other pertinent data, Billing statements mailed by Contractor shall be printed to contain the following information, and the language contemplated for compliance with this requirement shall be subject to the City Manager's approval:

(A) A "statement date" indicating the date the Bill is generated and mailed.

(B) For Residential Cart service: the service address associated with the account, the billing address, an itemized quantity of each type of service the Customer receives, the maximum rate charged for each type of service, and the serial numbers or other identifying information associated with each Cart. Customers should be able to determine from the Bill the types of services they are receiving and the rates charged for each individual service. Under this Agreement, a Bill for a Single Family Dwelling may correspond with one service address, but multiple Dwelling Units may exist for that service address. Thus, a Bill for a Single Family Dwelling may have more than one sets of Catts (i.e., Refuse, Recycling, and Green Waste Carts) being Billed at the standard rate, and the Bill should make clear the number of sets of Catt(s) to which it applies, as well as their serial number or other identifying information tied to each Cart.

(C) A notice to Customers that payments are due within thirty (30) days of the statement date, an advisement that the Customer's account will become delinquent if payment is not received by the 30th day following the statement date, an advisement of the date and time by which payments must be received in order to avoid delinquent fees (i.e., 4:00 p.m. on the 45th day following the statement date), and a notification of the amount of fees that will be imposed and the potential for service interruptions if payments are not received by the specified date and time.

(D) An advisement to Customers that payment can be made in the following manner:

- (1) by mailing payment to contractor at such address as contractor may designate; or
- (2) by automatic withdrawal from a checking account; or
- (3) by major credit card on-line (via the internet)

(E) An advisement that inquiries relating to Solid Waste Collection should be directed to Contractor, including an address, phone number and internet site, for such inquiries

13.3 Billing System

13.3.1 Computerization of Account Information

Contractor shall provide and maintain, at its expense, computer equipment sufficient to operate pertinent computer programs and otherwise provide the services required by this Section. Contractor shall create, at its own expense, computer programs sufficient to operate a computerized billing system, permanently maintain all account records and otherwise meet the requirements of this Section.

13.3.2 Minimum Computer Programming Requirements

In addition to any other requirements set forth herein, the programs created by Contractor to operate and maintain the billing system shall at a minimum be able to perform the following functions:

- (A) create a permanent record of any adjustment to a Customer's account;
- (B) work in connection with a backup system such that all Customer account data and records is protected from a computer failure and permanently preserved on not less than a daily basis; and
- (C) allow Customers to make payments on-line (i.e., via the Internet) by a major credit card.

13.3.3 Billing Inquiries

All Billing inquiries shall be entered into the computerized billing system. Contractor's computer programs shall keep a permanent record of all Billing inquiries and all adjustments to Customer Bills resulting therefrom.

13.3.4 Distribution of Public Information

If requested to do so by City, and at no charge to City, Contractor shall insert any printed material prepared by City into its Billing statements for delivery to its Customers. City shall not request Contractor to include any printed material in its Bills if such material is of a size, shape, or weight that would increase Contractor's postage costs or if such material does not fit into the envelopes utilized by Contractor to mail the Bills. Any printed material to be included in the Bills to be mailed by Contractor shall be provided to Contractor within a reasonable time in advance of Contractor's scheduled mailing date, such that the insertion of such material into Billing envelopes does not delay their scheduled mailing date.

13.4 Payment, Accounting Systems

13.4.1 Collection and Processing of Payments

13.4.1.1 Accounting and Deposit of Funds

All payments received by Contractor shall be appropriately credited to Customer accounts, deposited in a bank account and accounted for in a businesslike manner utilizing generally accepted accounting principles. To facilitate audits and record keeping Contractor shall make all withdrawals from its bank accounts by check, ACH debit/credit or wire, regardless of whether the withdrawal is to provide funds to City, Contractor, or any permissible subcontractor of Contractor.

13.4.1.2 Allocation of Funds

With respect to payments received from each Customer, unless a Customer specifically directs a different allocation, funds shall be allocated first to outstanding charges for Solid Waste Collection, then to any related delinquency fees or other administrative charges, up to the amount of any outstanding balance. Any overpayment shall be credited to future Bills in the same sequence, or returned to Customers as appropriate.

SECTION 14. FAITHFUL PERFORMANCE

14.1 Surety

Contemporaneously with execution of this Agreement, as security for Contractor's faithful performance of all obligations of this Agreement, Contractor shall provide a surety mechanism (the "Surety") as more fully defined below in the amount of One Hundred Thousand Dollars (\$100,000.00). The Surety may be comprised of either a performance bond or an irrevocable letter of credit, or a combination of both. If a letter of credit is utilized to satisfy some or all of the Surety requirement, it shall be drawn upon a financial institution with an office within two hundred fifty (250) miles of City, and otherwise in a form acceptable to the City Attorney. The performance bond, if any, shall be issued by a duly authorized corporate surety company authorized to do business in California, and in a form acceptable to the City Attorney. The cost of the Surety shall be the sole responsibility of Contractor. The Surety shall be released within thirty (30) days after both (i) the expiration of the Term of this Agreement; and (ii) Contractor's satisfactory performance of all obligations hereunder.

14.1.1 Forfeiture of Surety

In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the Surety, as may be necessary to recompense and make whole the City, forfeited to the City. Upon partial or full forfeiture of the Surety, Contractor shall restore the Surety to its original amount within thirty (30) days of the City's notice to do so. Failure to restore the Surety to its full amount within thirty (30) days shall be a material breach of this Agreement.

14.1.2 Use of Surety by City

Notwithstanding any provision hereof to the contrary, thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, either the letter of credit or performance bond comprising the Surety may be utilized by City for purposes including, but not limited to: (1) Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City, including specifically liquidated damages; and (2) Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor.

14.2 Replacement Letter of Credit

City may draw upon the entire letter of credit (if any) utilized to meet Contractor's obligations pertaining to the Surety, and convert it to a cash deposit, if Contractor fails to cause the letter of credit to be extended or replaced with another satisfactory letter of credit no later than sixty (60) days prior to its expiration.

SECTION 15. INSURANCE COVERAGE

Contractor shall procure and maintain during the entire Term of this Agreement the following types of insurance, and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Contractor's performance hereunder or the actions or inactions of any of Contractor's officers, agents, representatives, employees, or subcontractors in connection with Contractor's performance. The insurance requirements hereunder in no way limit Contractor's various defense and indemnification obligations, or any other obligations as set forth herein.

15.1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage.

2. The most recent editions of Insurance Services Office form number CA 00 01 1001 covering Automobile Liability, code 1 "any auto".

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

15.2 Minimum Limits of Insurance

Contractor shall maintain in force for the Term of this Agreement limits no less than:

15.2.1 Comprehensive General Liability

Two Million Dollars (\$2,000,000.00) limit aggregate and Two Million Dollars (\$2,000,000.00) limit per occurrence for bodily injury, personal injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

15.2.2 Automobile Liability

One Million Dollars (\$1,000,000.00) limit aggregate and One Million Dollars (\$1,000,000.00) limit per accident for bodily injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

15.2.3 Workers' Compensation and Employers Liability

Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000.00) per accident.

15.3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. If, in the reasonable opinion of the City, Contractor does not have sufficient financial resources to protect the City from exposure with respect to any deductibles or self-insured retentions Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

15.4 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

15.4.1 General Liability and Automobile Liability Coverage

City and its elected and appointed officials, officers, employees, agents and volunteers shall be named as additional insureds in connection with liability arising out of activities performed by or on behalf of Contractor; Premises owned, leased or used by Contractor; and vehicles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City or its elected and appointed officials, officers, employees, agents and volunteers. Contractor's insurance coverage shall be the primary insurance for the City and its elected and appointed officials, officers, employees, agents and volunteers in connection with the above enumerated categories. Any insurance or self-insurance maintained by City or its elected and appointed officials, officers, employees, agents and volunteers shall be in excess of Contractor's insurance and shall not contribute with it. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to City or its elected and appointed officials, officers, employees, agents and volunteers. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

15.4.2 Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against City and its elected and appointed officials, officers, employees, agents and volunteers for losses arising from work performed by Contractor for City.

15.4.3 All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

15.5 Acceptability of Insurers

The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California.

15.6 Verification of Coverage

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Article. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

15.7 Loss or Reduction in Insurance

In the event that Contractor fails to retain or maintain insurance with the scope and amounts of coverage required hereunder, City shall have the right, but not the obligation to either terminate

this Agreement, or obtain insurance coverage as required herein on behalf of Contractor and utilize funds from the Surety defined in Section 14 to pay the cost of providing such coverage.

SECTION 16.
ASSIGNMENT, SUBLETTING, AND TRANSFER;
REQUIREMENTS AND LIMITATIONS

16.1 General

Contractor shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement (collectively referred to as an "Assignment") to any other Person without the prior approval by the City Council. The City Council has unfettered discretion to approve or deny such an Assignment. Any such Assignment made without the approval by the City Council shall be void and the attempted Assignment shall constitute a material breach of this Agreement.

16.2 Assignment to be Broadly Interpreted

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

16.3 Nature of Agreement - Personal to Contractor

Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has selected Contractor to perform the services specified herein based on (1) Contractor's experience, skill and reputation for conducting its Solid Waste Handling Services in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

16.4 Procedure for Consideration of Assignment

If Contractor requests City's consideration of and consent to an Assignment, the City Council may deny, approve or conditionally approve such request in its sole and absolute discretion. Under no circumstances shall City be obliged to consider any proposed Assignment if Contractor is in default at any time during the period of consideration. Should the City consent to any Assignment request, such Assignment shall not take effect until all conditions relating to the City's approval have been met Any request for an Assignment shall be made in a manner to be

prescribed by the City Manager, and no request by Contractor for consent to an Assignment need be considered by City unless and until Contractor has met (or with respect to matters that would only occur upon completion of the Assignment if approved, made reasonable assurances that it will meet) the following requirements:

(A) Contractor shall undertake to pay City its reasonable direct and indirect expenses, including administrative, investigative, consulting, and attorneys' fees and costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such Assignment (collectively the "Administrative Assignment Fee"). An advance non-refundable payment in an amount to be determined by the City Manager towards the Administrative Assignment Fee shall be paid to the City prior to City's consideration of any Assignment request, although Contractor shall be responsible to pay all costs incurred by City in considering a request for Assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the Assignment.

(B) If requested to do so, Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.

(C) Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local laws, including the Environmental Laws and that the assignee has provided City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state and local laws regulating the Collection and disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

(D) The proposed assignee shall execute an agreement assuming all of Contractor's rights and liabilities under this Agreement.

SECTION 17. REVIEW OF SERVICES AND PERFORMANCE

17.1 Performance Hearing

(A) Commencing in or about July 2020, and on a biennial basis thereafter, City may hold a hearing to review Contractor's Solid Waste Collection efforts, source reduction, processing and other diversion services and overall performance under this Agreement (the "Solid Waste Services and Performance Review Hearing"). The purpose of the Solid Waste Services and Performance Review Hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, recycling, processing and disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and recycling and disposal system; and to ensure services are

being provided by Contractor with adequate quality, effectiveness and economy and in full compliance with the terms of this Agreement. Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals and where applicable AB 341's goals, regulatory constraints and Contractor performance. City and Contractor may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

(B) In addition to the Solid Waste Services and Performance Review Hearings City may hold in accordance with the immediately preceding paragraph, if the number of Customer complaints regarding Contractor's Solid Waste Collection are deemed by City to be excessive, City may, at any time (subject to the paragraph immediately below), hold a Solid Waste Services and Performance Review Hearing.

(C) City shall notify Contractor of its intent to hold a Solid Waste Services and Performance Review Hearing at least ninety (90) days in advance thereof. The notice will indicate whether the hearing will occur before City staff, the City Council, or such other body as the City may designate in the notice. Forty-five (45) days after receiving notice from City of a Solid Waste Services and Performance Review Hearing, Contractor shall submit a report to City which may contain such information as it wished to have considered, and shall contain the following:

- (1) Current diversion rates and a report on Contractor's outreach activities for the past year
- (2) Recommended changes and/or new services to improve the City's ability to meet the goals of AB 939 and AB 341 and to contain costs and minimize impacts on rates.
- (3) Any specific plans for provision of changed or new services by Contractor

(D) The reports required by this Agreement regarding Customer complaints shall be used as one basis for review of Contractor's performance, and Contractor may submit other relevant performance information and reports for consideration at the Solid Waste Services and Performance Review Hearing. In addition to the above, City may request Contractor to submit any other specific information relating to its performance for consideration at the Solid Waste Services and Performance Review Hearing, and any Customer may submit comments or complaints during or before the Hearing, either orally or in writing. Contractor shall be present at and participate in the Solid Waste Services and Performance Review Hearing.

17.2 Performance Satisfaction Survey

If requested by the City, Contractor will create and conduct a survey at Contractor's expense in preparation for any Solid Waste Services and Performance Review Hearing held pursuant to Section 17.1. City shall notify Contractor of its desire for such a survey at least ninety (90) days in advance of the Solid Waste Services and Performance Review Hearing. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Contractor. The Survey will be distributed to a minimum of ten percent (10%) of the Customers, selected at random. Contractor shall obtain City's approval of the survey's content, format, and

mailing list prior to its distribution. The City may require that Contractor have Customer responses to the survey returned directly to the City. The Survey results shall be made available to the City thirty (30) days prior to the Solid Waste Services and Performance Review Hearing.

**SECTION 18.
CITY'S REMEDIES; DEFAULT AND TERMINATION**

18.1 Notice of Default

If the City Manager determines that Contractor has defaulted in the performance of any obligation hereunder, or that Contractor's performance pursuant to this Agreement with respect to such matters has not been in conformity with reasonable industry standards which are obtained in similar cities in Southern California, the provisions of this Agreement, the requirements of the Municipal Code, the requirements of CalRecycle, including, but not limited to, requirements for source reduction and recycling or any other applicable federal, state, or local law or regulation, including but not limited to the laws governing transfer, storage, or disposal of special wastes, or hazardous wastes, the City Manager may provide written notice to Contractor of such default. The City Manager may, in such written notice, set a reasonable time within which correction of such default shall be made. Unless a longer or shorter time is otherwise specified by the City Manager, a reasonable time for correction shall be thirty (30) days from the date such written notice is given.

18.2 Failure to Cure

If Contractor fails to correct, to the satisfaction of the City Manager, all deficiencies contained in the written notice thereof within the specified time, or if it is not reasonably possible to correct such deficiencies within the specified time, and Contractor fails to commence to correct or remedy such deficiencies within the specified time and diligently effect such correction or remedy thereafter, then the City Manager may refer the matter to the City Council for review, or review the matter himself.

18.3 Review by City Manager

If the City Manager reviews the matter and determines that Contractor has failed to properly or adequately cure any default set forth above, the City Manager, in the exercise of his discretion, may terminate this Agreement, or take such other action as he deems appropriate to pursue any remedy available to City. A decision or order of the City Manager shall be final and binding on Contractor unless Contractor files a "Notice of Appeal" with the City Clerk within five (5) business days of the date the notice of the City Manager's decision is given. The City Manager shall schedule any appeal for consideration by the City Council at the earliest feasible City Council Meeting following the date a Notice of Appeal is given to City.

18.4 City Council Review

In the event an appeal of a decision of the City Manager is filed, or if the City Manager refers the matter to the City Council without rendering a decision, the City Council shall set the matter for consideration before the City Council as a regular agenda item. In reviewing the matter the City Council may consider any information reported by the City Manager regarding the deficiencies, and shall give Contractor, or its representatives and any other interested person, a reasonable opportunity to be heard. The City Council shall determine whether Contractor has failed to properly or adequately perform as set forth above, and if so whether to terminate the Agreement, or to pursue any other remedy available to City.

18.5 Performance During Reviews

Contractor's performance under this Agreement is not excused during any period of time when its performance is under review as set forth above, including at any time prior to a final decision as to whether such performance is deficient.

18.6 Termination without Right to Cure

The above right of termination as a result of Contractor's failure to timely cure any deficiency is in addition to City's right to terminate this Agreement without affording Contractor an opportunity to cure in circumstances where Contractor is determined by City to have materially breached this Agreement. City shall thus be afforded the right to terminate this Agreement in the event of any material breach hereof by Contractor without affording Contractor the right to cure as a result of any action, inaction or circumstance which is a legally defined material breach, or is defined herein as a material breach, and/or under any of the following circumstances which are hereby specifically defined as material breaches:

(A) If Contractor practices, or attempts to practice, any fraud upon City.

(B) If Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

(C) If Contractor willfully violates any orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement. So long as City's rights are not prejudiced during the pendency of any challenge to such orders or rulings by Contractor, Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no material breach of this Agreement shall be deemed to have occurred until a final ruling has been rendered.

(D) If Contractor ceases to provide Solid Waste Handling Services, including Collection of Solid Waste and/or Recyclable Material, as required under this Agreement over all or any portion of the Franchise Area for a period of seven (7) days or more, for any reason not specified as a force majeure event hereunder.

(E) If Contractor fails to materially comply with any insurance or indemnification requirement set forth in this Agreement.

(F) If City is required to pay any fine or penalty, which is not paid on its behalf by Contractor or which Contractor fails, refuses, neglects or is unable to pay or indemnify City against, relating to any diversion or other requirement of AB 939 and/or AB 341.

(G) If Contractor, or any management level employee of Contractor is convicted of a Criminal Matter (as defined herein). For purposes of this Section the term Criminal Matter refers to any felony or misdemeanor offense having any relationship to either Solid Waste Handling Services or public corruption (including, without limitation, bribery, conflict of interest related allegations, vote selling, or any similar type charges).

18.7 Liquidated Damages

18.7.1 General

Solid Waste from any established Customer on the scheduled Collection day and not Collected within the period described in this Agreement: \$150.00.

(C) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$150.00.

18.7.3.2 Collection Quality

(A) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright with lids secured which exceeds ten (10) such occurrences annually: \$150.00.

(B) For each occurrence of excessive noise or discourteous behavior which exceeds ten (10) such occurrences annually: \$250.00.

(C) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: \$250.00.

(D) For each occurrence of damage to private property in an amount in excess of \$1,000 which exceeds five (5) such occurrences annually: \$250.00.

(E) For each failure to clean up Solid Waste spilled from Containers, excepting amounts that are so nominal in nature that they would not reasonably be expected to be noticed by the driver of a Collection Vehicle, within 90 minutes that exceeds ten (10) such failures annually: \$150.00.

18.7.3.3 Customer Responsiveness

(A) For each failure to initially respond to a Customer complaint within one (1) business day, which exceeds five (5) such occurrences annually, and for each additional day in which the complaint is not addressed: \$250.00.

(B) For each failure to process Customer complaints to City as required herein, which exceeds five (5) such occurrences annually: \$250.00.

(C) For each failure to remove graffiti from Containers or to replace with Containers bearing no graffiti, within twenty-four (24) hours of a request from City: \$150.00.

18.7.3.4 Timeliness of Submissions to City

(A) Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily liquidated damage amount shall be:
Monthly Reports: \$100.00 per day
Quarterly Reports: \$250.00 per day
Annual Reports: \$350.00 per day

(B) For each calendar year in which Contractor fails to provide support to the City within thirty (30) days of year-end, documentation that it diverted at least the minimum tonnage required under this Agreement the liquidated damage amount shall be:

18.7.3.5 Cooperation During Transition With Subsequent Solid Waste Enterprise

(A) For each day routing information, including billing information and other operating records needed to service premises, is requested by City or any subsequent solid waste enterprise in accordance with Section 28 and is received after City- established due dates, both for preparation of a request for proposals and for any subsequent solid waste enterprise's implementation of service: \$100/day.

(B) For each day delivery of keys, security codes, remote controls used to access garages, gates and bin enclosures, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new solid waste enterprise servicing customers with access issues: \$100/day.

18.7.4 Process for Assessment of Liquidated Damages

(A) City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or through an investigation of Customer complaints. It is the desire of the parties to work together to avoid the imposition of liquidated damages and accordingly City will endeavor to timely communicate to Contractor any information that it receives which might give rise the imposition of liquidated damages in order to facilitate Contractor's ability to correct any deficiency, or prevent the recurrence of any conduct for which liquidated damages might eventually be imposed.

(B) Prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with City. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

(C) City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

18.7.5 Timing of Payment

Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against any security required by this Agreement to obtain payment, and/or find Contractor in default and exercise its right to terminate this Agreement as set forth herein.

SECTION 19.
CONTRACTOR'S REMEDIES; ADMINISTRATIVE HEARING

19.1 Administrative Hearing

Should Contractor contend that City is in breach of any aspect of this Agreement, it shall give notice to the City Manager requesting an administrative hearing on the allegation. The hearing shall occur as soon as reasonably possible, or on such date as mutually agreed by the parties, and shall be held before an impartial hearing officer to be determined by the City Manager. The hearing officer shall make an advisory ruling on Contractor's allegations, and suggest a remedy if a breach by City is determined to exist. The hearing officer's ruling and recommendations shall become final and binding if the parties so agree in writing within thirty (30) days of the date notice of the decision is given to both parties. Otherwise, the hearing officer's ruling shall have no further force or effect.

19.2 Other Remedies: Claims

Contractor shall be entitled to all available remedies in law or equity for City's breach of this Agreement; provided, however, Contractor shall not file or otherwise commence any action against City, in law or equity, in any court, until after an administrative hearing as set forth above has been completed, and the above noted thirty (30) day period to accept the hearing officer's decision has passed, or either City or Contractor has given timely written notice to the other that it will not accept the hearing officer's decision.

19.3 Actions for Damages

As a prerequisite to the filing and maintenance of any action for damages by Contractor against City arising out of this Agreement, Contractor shall present a claim to City, as required by Government Code Section 910 et seq., within 30 days of the date of the occurrence giving rise to the claim for damages.

SECTION 20. CITY'S ADDITIONAL REMEDIES

In addition to any other remedies set forth herein, City shall be entitled to any or all of the following rights and remedies in the event of a breach of this Agreement by Contractor:

(A) The right to use Contractor's equipment for the purpose of Collecting, transporting, and/or disposing of Solid Waste, including Recyclable Material, for a period not to exceed six (6) months. In the case of equipment not owned by Contractor, Contractor shall assign to City, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses such equipment, the right to use and possess the equipment. If City exercises its rights under this Section, City shall pay to Contractor the reasonable rental value of the equipment for the period of City's possession thereof (although payment may, if appropriate, occur in the form of a setoff against damages otherwise owed by Contractor pursuant to the terms hereof);

(B) The right to license others to perform the services otherwise to be performed by Contractor hereunder, or to perform such services itself; and

(C) The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach of this Agreement by Contractor, City will suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to specifically enforce the provisions of this Agreement, and to enjoin the breach hereof.

SECTION 21.
RIGHTS OF CITY TO PERFORM DURING EMERGENCY

21.1 Provision of Service

Should Contractor, for any reason whatsoever, refuse or be unable to provide Solid Waste Handling Services for a period of more than seventy-two (72) hours, and if as a result thereof, Solid Waste should accumulate in City to such an extent or in such a manner that the City Manager finds that such accumulation endangers or menaces the public health, safety, or welfare, City shall have the right, upon twenty-four (24) hours prior written notice to Contractor, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of Contractor previously used in providing Collection, transportation, and disposal of Solid Waste and provide, through its own forces or otherwise, Solid Waste Handling Services which Contractor otherwise would be obligated to provide pursuant to this Agreement. Contractor agrees that in such event it shall fully cooperate with City to affect such a transfer of possession for City's use

Should the facility for disposal of Solid Waste be unavailable for a period of more than seventy-two (72) hours the Contractor at their own cost use an alternative facility for the City's solid waste disposal upon the approval of the City Manager. .

21.2 Possession of Equipment

Contractor agrees, that in the event of circumstances described in Section 21.1 above, City may take temporary possession of and use all of said equipment and facilities without paying Contractor any rental or other charge. Upon Contractor giving City notice that it is able to resume its normal responsibilities under this Agreement City shall either relinquish possession of all of the above mentioned property to Contractor.

21.3 Exclusions from Right to Possession of Equipment without Compensation

Specifically excluded from the circumstances in which City may possess and utilize Contractor's equipment without compensation are circumstances in which Contractor fails or refuses to provide Solid Waste Handling Services hereunder for any reason which is not a force majeure event as defined herein. In such circumstances City's right to utilize and possess Contractor's equipment shall be subject to the provisions of the above Section 20.

SECTION 22.
PRIVACY

Contractor shall strictly observe and protect the privacy rights of Customers. Information identifying individual Customers or the composition or contents of a Customer's Solid Waste stream, or any of the billing information pertaining to any Customers, shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, ordinance, or regulation of a governmental agency having jurisdiction, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste audits which may be required by AB 939 or this Agreement. Contractor shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of Customers. The rights afforded Customers pursuant to this Section shall be in addition to any other privacy right afforded Customers pursuant to federal or state law.

SECTION 23.
REPORTS AND ADVERSE INFORMATION

The parties acknowledge that City will require reporting at various intervals by which information important to City can be compiled and analyzed. Throughout the Term the parties agree to work together to address City's needs with respect to the information to be contained in reports prepared by Contractor. The following is intended as a starting point in order to have established an objective baseline for reporting, but the frequency and content of the reports called out below may be changed by agreement of the parties; provided any such change is approved by the City Manager in writing. Monthly reports shall be submitted within twenty (20) calendar days after the end of the reporting month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter.

23.1 Monthly Reports

At a minimum, Contractor shall report the following to City on a monthly basis: Solid Waste Collected by Contractor for each month, sorted by type of Solid Waste in tons broken down at a level acceptable to City (which at a minimum shall include: refuse, Green Waste, e-waste and universal waste item counts, types of recyclables including PET, HDPE, mixed plastics, aluminum, cardboard, mixed paper, sand, and concrete. Only when programs are developed and the ability to track these sources exist), as well as by customer type (i.e., single family, multi-family, commercial, roll-off, curbside, etc.); the facilities where all Solid Waste Collected was processed or disposed; warning notices issued for contaminated Recyclable Materials, and Green Waste Containers; and a narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate.

23.2 Quarterly Reports

At a minimum, Contractor shall report the following to City on a quarterly basis: the information required in the monthly reports; the complaint summary for the quarter summarized by nature of complaints; copies of promotional and public education materials sent during the quarter; description of Contractor outreach activities conducted the previous quarter; and such other information or reports that the City may reasonably request or require. Contractor shall, upon demand by City, provide true and accurate copies of landfill tipping receipts, records showing delivery at processing or reuse facilities, and similar such documents in order to enable City to verify Contractor's quarterly reports.

23.3 Annual Reports

Within 30 days of the end of each calendar year during the Term of this Agreement and within thirty (30) days after the end of the Term, Contractor shall submit a written annual report, at its sole expense, in a form approved by City, which includes, but is not limited to, the following information:

(A) A summary of the previous year's activities including, but not limited to, services begun or discontinued during the reporting year, and the number of Customers broken down on a monthly basis;

(B) A summary of the total tons of Solid Waste Collected in City in the preceding year as well as a summary of the total tonnage;

(C) Information and reports required by City to meet its reporting obligations imposed by AB 939 and the regulations implementing AB 939, in a form and content approved by the City Manager;

(D) A revenue statement, certified by the chief financial officer of Contractor, setting forth Franchise Fees paid and the basis for the calculation thereof, including specifically a breakdown of sources of revenue included in Gross Receipts and the amount of revenue derived from each such source comprising Gross Receipts;

(E) A list of Contractor's officers and the members of its Board of Directors, or as applicable a list identifying all Persons holding a membership interest in Contractor;

(F) A list of stockholders or other equity investors holding five percent (5%) or more of the interest in Contractor; and

(G) A list of each service address, the total number of Carts/bins/cans at each such address, types of services being Billed to each service address and the serial numbers associated or other identifying information associated with each cart at such address as required by Section 8.1.9(F).

23.4 Format of Reports

Each monthly, quarterly, and annual report shall be submitted to City, addressed to the City Manager or his or her designee. Records related to performance of this Agreement shall be maintained by Contractor in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. The format of each report shall be approved by City. Contractor agrees to submit all reports to e-mail addresses designated by City in an electronic format approved by the City, compatible with City's software/computers at no additional charge.

23.5 Adverse Information

(A) Contractor shall provide City two copies of all reports and other material adversely affecting this Agreement submitted by Contractor to the United States Environmental Protection Agency, CalRecycle, the California Regional Water Quality Control Board, and any other federal, state, regional, or local regulatory agency. Copies shall be submitted to City simultaneously with Contractor's filing of such matters with said agencies. Contractor's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request.

(B) Contractor shall submit to City copies of all pleadings, applications, notifications, communications, and documents of any kind submitted by Contractor to, as well as copies of all decisions, correspondence, and actions by, any federal, state, and local courts, regulatory agencies, and other government bodies relating in any manner to Contractor's performance of services pursuant to this Agreement. To the degree authorized by law, any confidential data exempt from public disclosure shall be retained in confidence by City and its authorized agents and shall not be made available for public inspection.

(C) Contractor shall submit to City such other information or reports in such forms and at such times as City may reasonably request or require.

(D) All reports and records required under this or any other Section hereof shall

be furnished at the sole expense of Contractor.

23.6 Disaster Plan

Within 90 days of the Effective Date, Contractor shall prepare an updated draft disaster debris cleanup implementation plan that sets forth procedures for collection of debris following a major disaster such as an earthquake, fire or other similar event. The disaster plan shall address priorities for cleanup at critical facilities, procedures for reimbursement for costs, describe communication plans, list key contact persons, and provide maps showing proposed sites for stockpiling of disaster debris that cannot be transported to the landfill. Contractor shall coordinate the plan with City's emergency service teams. The draft plan shall be presented to the City Manager for consideration and approval. The final plan shall be distributed to those employees of Contractor and City who would have a role in implementing it in the event of a disaster.

23.7 Failure to Report

The refusal of Contractor to file any of the report required, or the inclusion of any materially false or misleading statement or representation made knowingly by Contractor in such report shall be deemed a material breach of the Agreement, and shall subject Contractor to all remedies, legal or equitable, which are available to City under this Agreement or otherwise.

SECTION 24. COMPENSATION

24.1 Contractor Rates

Contractor shall provide services to Customers pursuant to this Agreement at rates it sets, charges to, and collects from Customers, which rates shall not exceed those set forth in the attached Exhibit A, which sets out the maximum rates that may be charged by Contractor, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. The maximum rates set forth in Exhibit A are inclusive of all services to be provided, including transportation, disposal, and Container costs, and no other charges shall be imposed by Contractor for such services.

24.2 Resolution of Disputes Regarding Rate Adjustments

Any dispute regarding an adjustment to the maximum rates Contractor may charge, or the computation thereof, shall be decided by the City Manager. The rates in effect at the time such dispute is submitted to the City Manager shall remain in effect pending resolution of such dispute. The effective date of the adjusted maximum rate following the resolution of any such dispute, whether retroactive or prospective, shall be determined by the City Manager.

24.3 Annual Consumer Price Index Adjustments

Commencing on July 1, 2021, the maximum rates as set forth in Exhibit A shall be adjusted, and such rates shall be adjusted annually thereafter on each subsequent July 1st during the Term hereof (the "Adjustment Dates"), by multiplying each rate by a percentage change in the average Consumer Price Index ("CPI") for Siskiyou County, California for the twelve (12) month period ending the December immediately prior to the applicable Adjustment Date versus the index average for the previous twelve months. At least forty-five (45) days prior to charging Customers any rate increased due to an increase in the CPI, Contractor shall obtain the City Manager's approval to do so. The City Manager shall approve such a request unless it is determined, based upon substantial evidence, that the requested adjustment to the maximum rate does not meet the

requirements as set forth herein.

24.4 Limitations to Annual CPI Adjustments

Notwithstanding anything to the contrary in Section 24.3 above, the maximum annual adjustment occurring pursuant to Section 24.3 shall be limited by the provisions set forth below:

24.4.1 Three Percent (3%) Cap

Any maximum rate may not be increased in any given year by more than three percent (3%) without regard to any higher increase which may otherwise be justified by the formula set forth in Section 24.3. In the event an increase exceeds the three percent (3%) cap, the un-applied percentage may be rolled forward and applied to maximum rate increases in subsequent years to the extent, and provided that, no maximum rate increase exceeds the three percent (3%) cap.

24.4.2 Compliance with Agreement

No increase to the maximum rates shall occur if the City Manager determines that Contractor did not fully comply with all terms of this Agreement in the Rate Year preceding the increase, including without limitation, provisions hereof relating to reporting, diversion, and Customer service standards.

24.5 Discretionary Adjustments

Contractor may request an adjustment to the maximum rates set forth in Exhibit A at reasonable times other than as set forth in Section 24.3 for unusual changes in the cost of providing service under this Agreement. For each request for an adjustment to the maximum rates brought pursuant to this Section Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate. City shall review Contractor's request and, in the City Council's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. City may consider increases or decreases in Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request. Contractor may not request an extraordinary increase in the maximum rates as a result of: changes in fees or taxes such as Social Security, disability or income tax; changes in the market value of Recyclables or processing costs for Recyclables or Green Waste; inaccurate estimates by Contractor of its cost of operations.

24.6 Grants

From time to time, federal, state or local agencies including the City may provide to Contractor grants to assist in financing qualified programs provided by Contractor in the City (including, without limitation, grants for diversion programs and related equipment, alternative fuel vehicles and equipment, and Household Hazardous Waste Collection and Disposal). Contractor shall notify City upon receipt of any such grant funds that may be used to fund services provided pursuant to the terms of this Agreement. With the exception of grants already received by Contractor as of the Effective Date, and grants for Collection Vehicles, any funds received through grants for services in the City are intended to benefit City and its residents and businesses, and in essence are held by Contractor in trust on behalf of City. Accordingly, Contractor agrees that the total amount of compensation it receives from Customers hereunder, may be reduced by

the amount of any such grant, unless the grant is used to pay for services in City. The City Council shall determine whether the reduction in Contractor's compensation shall be: (1) passed through to Customers designated by City as a reduction to maximum rates; (2) as an offset to the next increase to maximum rates requested by Contractor; (3) paid to City for use as City directs; or (4) applied in any combination of (1) through (3).

**SECTION 25.
IDENTIFICATION OF CONTRACTOR**

Contractor has agreed to use the name "[INSERT HAULER NAME]" to identify itself to the public as the specific organization that shall provide all services under this Agreement. Unless otherwise approved in writing by City, this name shall be used for all correspondence, Billing statements, directory listings, references, signs, and vehicle and Bin identification.

**SECTION 26.
INDEMNIFICATION**

26.I General

(A) Contractor hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively the "Indemnities") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising out of, resulting from, and/or in any way connected with this Agreement including: (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, and/or subcontractors to comply in all respects with the provisions of this Agreement, all Applicable Laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws); and (4) any challenge to the award of, or any provisions of this Agreement (including any claim that the application of any provision hereof violates any provision of the California Constitution). The foregoing indemnity and hold harmless provisions shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of Indemnities' negligence, but shall not extend to matters resulting from Indemnities' sole negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys acceptable to City) City, its elected and appointed boards and commissions, officers, employees, and agents against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse City for any and all costs and expenses City incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Contractor.

(B) Contractor, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend City and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial,

administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights assessed by other Persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or any other federal or state laws to provide Collection services in the City.

(C) The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation, and shall survive the expiration or earlier termination of this Agreement.

26.2 Hazardous Substances Indemnification

(A) Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to City) reimburse, indemnify, and hold City and its past and present officers, council members, employees, consultants and agents (hereinafter "Indemnified Parties") harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:

(1) results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnified Party is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or

(2) relates to material Collected, transported, recycled, processed, treated or disposed of by Contractor.

(B) Contractor's obligations pursuant to this Section shall apply, without limitation, to:

(1) any Claims brought pursuant to or based on the provisions of the Environmental Laws, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., the Carpenter-Presley-Tanner Hazardous Substances Account Act (California Health & Safety Code Sections 25300 et seq.), the California Hazardous Waste Control Laws (California Health and Safety Code Sections 25100 et seq.), the California Porter-Cologne Act (California Water Code Section 13000 et seq.), and any and all amendments and regulations thereto, and any other federal, state, regional or local environmental statutory or regulatory provision;

(2) any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation by Contractor of any facility;

(3) any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, disposal, processing or use of any materials recovered by Contractor; and

(4) any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

(C) The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor.

(D) For purposes of this Agreement, the term "Hazardous Contaminant" shall mean any "hazardous material," as that term is defined under California Health & Safety Code Section 25501(0); any "hazardous substance," as that term is defined herein or under California Health & Safety Code Sections 25281(h), 25501(p), 25501.1 and under Title 42, Section 9601(14) of the United States Code; any "hazardous waste," as that term is defined herein and under Title 42, Section 6903(5) of the United States Code and under California Health & Safety Code Section 25501(q); any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to the above-referenced statutory and regulatory provisions made before or after the date of execution of this Agreement.

(E) The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation, and shall survive the expiration or earlier termination of this Agreement.

SECTION 27. CONTRACTOR'S BOOKS AND RECORDS; AUDITS

27.1 Maintenance and Inspection of Records

Contractor shall maintain all records relating to the services provided hereunder, including but not limited to Customer lists, billing records, accounts payable records, maps, AB 939 compliance records, records reflecting the number of refuse, recycling and Green Waste routes and route hours by service category (such as residential, multi-family, commercial, roll-off, and special services), records demonstrating facilities, equipment and personnel used to perform services, records reflecting the number of refuse, recycling and Green Waste Containers in service by frequency of Collection for each customer group (such as single family, multi-family, commercial, roll-off); records reflecting the number of roll-off box pulls, and such other documents and materials which reasonably relate to Contractor's compliance with the provisions of this Agreement (the "Records"), for the full Term of this Agreement, and an additional period thereafter of not less than three (3) years, or any longer period required by law. City shall have the right, upon five (5) business days advance notice, to inspect the Records. Such Records shall be made available to City at Contractor's regular place of business, but in no event outside the County of Siskiyou.

27.2 CERCLA Defense Records

City views the ability to defend against the Comprehensive Environmental Response,

Compensation and Liability Act and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) for not less than five (5) years following the termination of this Agreement, and agrees to notify City's Risk Manager, City Clerk and City Attorney before destroying such records thereafter. At any time, including after the expiration of the Term hereof, Contractor shall provide copies of such records to City. The requirements of this Section shall survive the expiration of the Term of this Agreement.

27.3 Ongoing Compliance Review

City intends review Contractor's performance on an ongoing basis to ensure compliance with the terms and provisions of this Agreement, and it is City's intent that a designated portion of the Administrative Cost Reimbursement, as more fully described in Section 11.2, will be used to fund City's costs associated with ensuring Contractor's ongoing compliance. At a minimum, City intends to have internal staff or outside consultants annually review Contractor's performance to ensure ongoing compliance with the terms hereof, including, but not limited to, the payment of required fees, performance of the services stated herein, implementation of programs required under the Agreement, Contractor's maintenance and upkeep of records, and compliance with all Applicable Laws. Contractor shall provide any and all information reasonably requested by City in connection with its efforts to ensure compliance with the terms hereof, regardless of whether such information is specifically otherwise called out herein as an item that Contractor is required to maintain and provide to City.

27.4 Audits

27.4.1 Examination of Services

From time to time, anticipated to be at least once every other year, City may request Contractor to make available any or all of its records related to performance hereunder available to an independent auditor or examiner, to be selected by the City, for auditing and examination purposes (a "Discretionary Audit"). The first Discretionary Audit shall be performed in 2017 and shall be based on the Contractor's reports and records through calendar year 2016. The scope of the Discretionary Audit and auditor or examiner will be determined by City and the scope may include, but is not limited to, compliance with terms of this Agreement, Customer service levels and Billing, fee payments, Gross Receipts, tonnage, and verification of diversion rates. Except as otherwise provided herein, City shall bear the cost of any Discretionary Audit above the Contractor Audit Reimbursement (defined below). Should any Discretionary Audit reveal an underpayment of any Franchise Fee required pursuant to this Agreement, the amount of such underpayment shall become due and payable to City not later than fifteen (15) days after written notice of such underpayment is sent to Contractor by City, complete with any additional late charges as set forth herein.

Contractor shall reimburse City for the costs of a Discretionary Audit as follows "Contractor Audit Reimbursement". If a Discretionary Audit reveals inaccuracies or inconsistencies in more than five percent (5%) of all Customer accounts, either with Contractor's operations or billing systems, or an underpayment of Franchise Fees of more than three percent (3%), Contractor shall bear the entire cost of such Discretionary Audit, including any additional audit costs associated with, to the extent deemed necessary by City, expanding the scope of the Discretionary Audit.

27.4.2 Route Audit

Contractor shall complete an audit at its expense of its Collection routes for all Customers at Residential and Commercial Premises at such times as may be requested by City; provided, however, that while City may request that such an audit occur at any time, it may not request such audit at Contractor's expense more than 5 times during the Term. The timing of such audit is at the City's discretion and may be required to be timed with the issuance of a request for proposals for a new agreement. The route audit, at minimum, shall consist of an independent physical observation by Person(s) other than the route driver or route supervisor of each Customer in the City. The route audit shall include, as a minimum, the following information for each account:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account service address;
- Service Level per Billing System (quantity, size, frequency);
- Service Level per Routing System;
- Observed Containers (quantity, type and size);
- Serial number (or other coding if acceptable to the City Manager) identifying each Cart and its associated service address;
- Bin condition;
- Proper signage; and
- Graffiti.

Within thirty (30) days after the completion of the route audit, Contractor shall submit to City a report summarizing the results thereof which shall include:

- Identification of the routes;
- Truck numbers;
- Number of accounts, by route and in total;
- Number of Containers (broken down by type) per service address, per route and total number of Containers;
- Types of exceptions observed;

- Number of exceptions by type;
- Total monthly Billing, pre-audit;
- Total monthly Billing, post-audit (subsequent to corrections of identified exceptions);
- Percentage of the number of accounts with errors to the total number of accounts served; and
- Percentage of the "net" change in monthly Billing as a result of the audit to the total pre-audit monthly Billing.

The report shall include a description of the procedures followed to complete the audit, and shall include the names and titles of those supervising the route audits and the name and titles of those performing the observations. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used. The report shall also include a description of the changes and Contractor's plans to resolve any exceptions. The route audit data and results of the audit shall be available for review by the City or its representative.

SECTION 28. TRANSITION OBLIGATIONS

At the end of the Term, or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent solid waste enterprise it designates to assure a smooth transition of services. Contractor's cooperation shall include, but not be limited to, providing route lists, billing information and other operating records needed to service all premises covered by this Agreement. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall provide any new solid waste enterprise with all keys, security codes and remote controls used to access garages, gates and bin enclosures. Contractor shall be responsible for coordinating transfer immediately after its final collection activities, so as to not disrupt services, including coordinating with the new solid waste enterprise on the removal of Contractor's Containers and the delivery of the new solid waste enterprise's Containers. Contractor shall provide City with detailed route sheets containing service names and addresses, billing names and addresses, monthly rate and service levels (number and size of containers and pickup days) at least 90 days prior to the transition date, provide an updated list two weeks before the transition, and a final updated list with any changes the day before the transition. Contractor shall provide means of access to the new solid waste enterprise at least one full business day prior to its first day of collection, and within sufficient time so as to not impede in any way the new solid waste enterprise from easily servicing all Containers.

SECTION 29. GENERAL PROVISIONS

29.1 Force Majeure

Contractor shall not be in default under this Agreement in the event that its ability to provide Solid Waste Handling Services or Temporary Services, in compliance with its obligation to do so hereunder, is temporarily interrupted or discontinued for any of the following reasons:

riots, wars, sabotage, civil disturbances, insurrections, strikes or other labor disturbances lasting five (5) days or less, explosion, natural disasters such as floods, earthquakes, landslides, and fires, or "other catastrophic events" which are beyond the reasonable control of Contractor. The term "other catastrophic events" does not include: (i) the financial inability of Contractor to perform; (ii) failure of Contractor to obtain any necessary permits or licenses from other governmental agencies; (iii) the failure to obtain the right, or the loss of the right, to use the facilities of any public utility where such failure is due in substantial part to the acts or omissions of Contractor; or (iv) strikes or other labor disturbances lasting longer than five (5) days.

29.2 Independent Contractor

Contractor is an independent contractor and not an officer, agent, servant, or employee of City. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, and subcontractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor. Neither Contractor nor its officers, employees, agents, or subcontractors shall obtain any rights to retirement or other benefits which accrue to City employees.

29.3 Pavement Damage

Contractor shall be responsible for the cost of repair of any extraordinary damage to the public streets located within the City resulting from providing the services required hereunder

29.4 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees, agents, or subcontractors of Contractor to private or public property shall be promptly repaired or replaced at Contractor's expense.

29.5 Right of Entry

Contractor shall not have the right, until Contractor receives permission from the property owner, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Temporary Services and/or Solid Waste Handling Services pursuant to this Agreement.

29.6 Law to Govern: Venue

The laws of the State of California shall govern this Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Siskiyou.

29.7 Amendment

This Agreement is intended to carry out City's obligations to comply with the provisions of AB 939 and AB 341, as implemented by regulations of CalRecycle, as they from time to time may be amended. In the event that, after the effective date of this Agreement, AB 939 or AB 341 is amended, or other state or federal laws or regulations are enacted and prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Except as otherwise expressly stated herein, no other amendment of this Agreement shall be valid unless it is in writing and duly executed by the parties.

29.8 Notices

All notices required or permitted to be given under this franchise shall be in writing and shall be personally delivered or sent by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City: City of Dunsmuir
Attn: City Manager
5915 Dunsmuir Ave
Dunsmuir, CA 96025

To Contractor: [NAME]

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed given on the date served if served personally between the hours of 9:00 a.m. to 4:00 p.m. on any regular business day for City's business offices. If mailed, notice shall be deemed given three (3) business days from the date such notice is deposited in the United States mail in the manner proscribed above.

29.9 Savings Clause

If any non-material provision of this Agreement is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

29.10 Exhibits Incorporated

Exhibits A through E are attached to and incorporated in this Agreement by reference.

29.11 Joint Drafting

This Agreement shall be interpreted as if it were drafted jointly by the parties to the Agreement.

29.12 City's Authorized Agent

Notwithstanding anything contained herein to the contrary, and excepting amendments hereto and such actions set forth herein specifically calling for City Council action or approval, the City Manager is designated as the City's authorized agent to take any action with regard to any matter, or enforce any right, set forth herein requiring action by the City.

29.13 Integrated Agreement

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

other party to execute this instrument.

29.14 Section Headings

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

29.15 Compliance with Law

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all Applicable Laws, including the laws and regulations of the United States, the State of California, the provisions of the Municipal Code, and any federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended.

"City"

CITY OF DUNSMUIR

By: _____
Juliana Lucchesi, Mayor

ATTEST:

By: _____
Wendy Perkins, Deputy City Clerk

APPROVED AS TO FORM:

By: _____
John Kenny, City Attorney

"Contractor"

[NAME], LLC.

By: _____

Its: _____

EXHIBIT A

MAXIMUM RATE SCHEDULE FOR SOLID WASTE HANDLING SERVICES:

Describe the services to be provided:

EXHIBIT B

CONTAINER/BIN SPECIFICATIONS

- Contractor shall provide Container Specifications to City which shall be attached to this Exhibit B. All Containers utilized by Contractor shall meet the standards of the industry and shall perform to the reasonable satisfaction of the City Manager in order to be utilized in City. Container sizes specified within this Agreement may vary by manufacturer type and specifications up to 10% more or less in volume than that identified.
- Each Refuse, Green Waste and Recycling Cart utilized by Contractor shall be labeled on the inside in English and Spanish and with graphics so as to: (1) explain/depict the items for which it is designated to Collect, and (2) identify the name of Contractor and Contractor's phone number for service related issues, including complaints. In addition, each such Cart shall include information, in a format acceptable to City (such as hot stamping or stickers), regarding Contractor's Bulky Item service, and a phone number that Customers can call to access such service.
- The body of Refuse Carts shall be a uniform black color, Recycling Carts shall be a uniform blue color and Green Waste Carts shall be a uniform green color.
- Any Cart distributed by Contractor in City after the Effective Date shall be newly manufactured and have never previously been used for the Collection of Solid Waste.
- All Carts distributed pursuant to this Agreement shall have an identifying serial number hot stamped into the Cart body, or otherwise have an individual identification demarcation affixed to the Cart in a manner acceptable to the City Manager. Contractor shall keep current, and provide to City at the times set forth in this Agreement, a list of each address to which a Cart has been distributed and the serial number (or other acceptable identification) of all Carts at each such address.
- Upon request of any Customer, Contractor shall provide Bins with lids that close securely and which are capable of being locked at rates that do not exceed those set forth in Exhibit A.

EXHIBIT C

MULTI-FAMILY DWELLING RECYCLING PROGRAM

Describe the program:

EXHIBITD

COMMERCIAL RECYCLING PROGRAM

Describe the program:

EXHIBIT E

FACILITIES TO BE USED FOR DISPOSAL AND PROCESSING

Contractor shall use the following facilities for the processing, transfer, and/or disposal of all material collected under this Agreement, and shall obtain written advance approval from the City Manager prior to using alternative sites:

(TO BE COMPLETED BASED ON PROPOSAL]

Attachment 3

Sample Proposal Table of Contents

The following is an order that Proposers should adhere to when preparing their proposals:

1) Introductory Requirements

- a) Cover page
- b) Transmittal letter
- c) Table of contents (with corresponding page numbers)

2) Exhibits

- a) Exhibit 1: Rate Schedule
- b) Exhibit 2: Exceptions to Draft Agreement Terms
- c) Exhibit 3: Proposer Business Information
- d) Exhibit 4: Container Specifications
- e) Exhibit 5: Multi-Family Dwelling Recycling Program
- i) Exhibit 6: Commercial Recycling Program
- g) Exhibit 7: Disposal or Diversion Facilities; Operating Facilities
- h) Exhibit 8: Confirming Use of Disposal or Diversion Facilities
- i) Exhibit 9: Implementation Plan
- j) Exhibit 10: Transition Experience
- k) Exhibit 11: Evidence of Ability to Perform
- l) Exhibit 12: Insurance and Surety Evidence
- m) Exhibit 13: Affidavit re Anti-Collusion and No Other Pending Legal Actions
- n) Exhibit 14: Solid Waste Franchise Experience
- o) Exhibit 15: Diversion Rates
- p) Exhibit 16: Community Outreach
- q) Exhibit 17: Proposal Enhancements

ATTACHMENT 4
RATE, SUPPORTING COST AND OPERATING DATA PROPOSAL FORMS

Table of Contents

<u>Page</u>	<u>Contents</u>
4-A	Proposed Estimated First-Year Rate Revenue
4-B	Proposed Estimated First Year Residential Cart/Can Service Revenue
4-C	Proposed Estimated First Year Bin and Commercial Cart - Proposed Rates
4-D	Proposed Estimated First Year Bin and Commercial Cart - Service Count
4-E	Proposed Estimated First Year Bin and Commercial Cart - Rate Revenue
4-F	Proposed Estimated First Year Roll-Off Box and Temporary Bin Revenue
4-G	Source Separated Commercial Recycling {if proposed}
4-H	Projected Revenue Requirement for First Twelve Months of Franchise Agreement
4-I	Projected Routes and Route Hours
4-J	Tonnage Diversion Plan

These attachments are provided for proposers use if desired.

PROPOSED ESTIMATE FIRST-YEAR RATE REVENUE

Proposing Company: _____

Confirm that rate revenue is accurately reflected, based upon proposer's proposed rates.

Row	Service Category	Proposed First Year Annual Rate Revenue ⁽¹⁾	Reference
1	Residential Cart/Can Service Revenue	\$	Attachment 4-B
2	Bin and Commercial Cart/Can Revenue	\$	Attachment 4-C
3	Temporary Bin Rate Revenue	_____	Attachment 4-F, Row 15
4	Total Annual Estimated First-Year Rate Revenue	\$	

(1) Inclusive of all City fees.

PROPOSED ESTIMATED FIRST YEAR RESIDENTIAL CART SERVICE REVENUE

Proposing Company: _____

Residential Cans	Rate/ Customer	Number of Customers	Rate Monthly	Rate Yearly
1 CAN WEEKLY 35 Gal				
2 CANS WEEKLY 70 Gals				
3 CANS WEEKLY 105 Gals				
4 CANS WEEKLY 140 Gals				
5 CANS WEEKLY 175 Gals				
Residential Cart/Bin	Rate/Customer	Number of Customers	Rate Monthly	Rate Yearly
1 Bin/Cart Weekly 64 Gal				
1 Bin/Cart Weekly 96 Gals				
Additional Bin/Cart Weekly				
Residential Recycling	No Charge			
Blue Bags (2) Once Monthly				
Residential Recycling Cart/Bin	,Rate/Customer.	Number of Customers	Rate Monthly	Rate Yearly
1 Bin Cart Monthly-64 Gals				
1 Bin/Cart Monthly 96Gal				
Additional Bin/Cart Monthly				

PROPOSED ESTIMATED FIRST YEAR BIN AND COMMERCIAL RATE REVENUE – PROPOSED RATES

ATTACHMENT4C

Proposing Company: _____

Rates:

	Container Type/Size	Rate	1/wk	2/wk	3/wk	4wk	5wk
1							
2	<i>Cans</i>						
3	One Can						
4	Two Cans						
5	Three Cans						
6	Four Cans						
7	Five Cans						
8	Six Cans						
9	Seven Cans						
10	Eight Cans						
11	Two Cans						
12	Three Cans						
13	Four Cans						
14	Five Cans						
15	Two Cans						
16	One Can						
17	Two Cans						
18	Three Cans						
19	Four Cans						
20	Six Cans						
21	BINS:						
22	One Two Yard Bin						
23	One Two Yard Bin						
23	One Two Yard Bin						
24	One Two Yard Bin						
25	One Two Yard Bin						

PROPOSED ESTIMATED TEMPORARY **BIN** REVENUE

Proposing Company:

SOURCE SEPARATED COMMERCIAL RECYCLING (if proposed)

Proposing Company: **I**

instructions: Provide source separated commercial recycling program estimates and attach supporting assumptions and computations for the following:

1	# of Customers with Recycling Containers	I	<u>Customers</u>
2	Total Number of Recycling Containers:		
3	- Recycling Bins		bins
4	- Recycling Carts		carts
5	Total Yards per Week of Recycling Container Capacity (1)		yards/week
6	Estimated Reduction in Refuse Service Container Capacity		yards/week
7	Estimated Annual Recycling Rate Revenues		per year
8	Estimated Annual Reduction in Refuse Service Rate Revenue		per year
9	Net Annual Rate Revenue increase (Decrease)		per year

(1) Conversion Factor: 201.98 gallons/yard

4-G

PROJECTED REVENUE REQUIREMENT FOR THE FIRST TWELVE MONTHS OF FRANCHISE AGREEMENT

Proposing Company: _____

ATTACHMENT 4

Instructions: Fill in boxes outlined in bold.

Row	Residential Cart Service			Bin Service		Roll-Off Service Holidays, Special Events, Clean-up Days, All Other	Total Annual Revenue Requirement
	Refuse	Recyclables	Yard Waste	Refuse	Recyclables		
1	Operations						
2	Truck Operating Costs (a)						
3	Transfer Station, Transport, MRF costs						
4	Green Waste Processing/Disposal Costs						
5	Landfill Disposal Costs (b) Transformation						
6	Costs (WTE, if applicable)						
7	Container Depreciation/Amortization Costs						
8	Less Recyclable Material Sales Revenues						
9	Subtotal: Operations Costs						
10	General, Administrative and Profit						
11	Annualized Administrative Fee						
12	Bulky/Abandoned Item Cost Reimbursement						
13	Annualized Auditing Fee (c)						
14	Amortized City Contracting Fee (d)						
15	Franchise Fee 4%						
16	Other						
17	TOTAL REVENUE REQUIREMENT						
18	Tons Collected						
19	Operations Cost Per Ton Collected						
	Revenue Requirement per Ton Collected						

(a) Includes vehicle maintenance, vehicle insurance, fuel, uniforms and other route costs.

PROJECTED ROUTES AND ROUTE HOURS

Proposing Company: _____

Instructions: Fill in boxes outlined in bold.

Row	Route Type	Routes-Per Day						Total Route Days/Week	Hours per 1 Route per Day(1)	Total-Route Hours.Per Week (2)	#of Crew on Route
		Mon	Tues	Wed	Thurs	Fri	Sat				
2	Automated Recycling Routes							-		-	
3	Automated Green Waste Routes							-		-	
4	Refuse Bin Routes							-		-	
5	Recycling Bin Routes							-		-	
6	Bulky Item Pickup Routes							-		-	
7	RollOff Box Routes							-		-	
8	Scout Vehicle Routes							-		-	
9	Other:							-		-	
10	Other:							-		-	
11		-	-	-	-	-	-	-		-	

(1) For example, 8, 9 or 10 hours per day.

(2) Total Route Days/Week multiplied by Hours Per Route per Day.

TONNAGE DIVERSION PLAN

Proposing Company: _____

Instructions: Provide projected diversion. Fill in boxes outlined in bold. Confirm automatic calculations.

Row	Waste Stream	Annual Tons Collected (from 4H; row 18)	Annual Tons Diverted							Tons Diverted as % of Tons Collected	
			commingled Recycling	Greenwaste	C&D	Transformation	Mixed Waste Processing	Food Waste	Other (I)		Total Diverted
1	Residential Cart Refuse										
2	Residential Cart Recyclables										-
3	Residential Cart Greenwaste										
4	Bin Refuse										
5	Bin Recyclables										-
6	Roll-Off Service										-
7	Holiday Trees/ Bulky Items/ Citywide Cleanups, Special Events										-
8	Total										-
9	Minimum Recovery Rate for Processing Mixed Refuse (refuse loads only, excluding all source separated loads):										

Attachment 5

Affidavit Re Anti-Collusion and No Other Pending Legal Actions

THIS ATTACHMENT MUST BE COMPLETED IN ORDER FOR PROPOSER'S BID TO BE CONSIDERED.

The undersigned, being first duly sworn, deposes and says:

I have the legal authority to execute this affidavit on behalf of _____ ("Proposer").

Proposer has not directly or indirectly induced, solicited, colluded with, or agreed with any other person, potential proposer(s), or actual proposer(s) to refrain from submitting a proposal, to control the price of a proposal, nor to limit the scope of a proposal or number of proposers.

Proposer further has not and will not share the information to be contained in Proposer's sealed proposal to any other person, potential proposer(s), or actual proposer(s) until the sealed proposals are opened by the City of Dunsmuir ("City"). The prohibition does not extend to those that have a partnership or other similar financial interest in Proposer.

Proposer has not directly or indirectly induced, solicited, colluded with, or agreed with any City official, officer, employee, or representative to as to the price or scope of services in the solid waste agreement, nor have there been any conversations between Proposer and any City official regarding the exchange of money or other things of value for special consideration in the award of said solid waste agreement.

Proposer has not made any payment, donation, nor agreed to pay or agreed to make a donation either directly or indirectly to any City official, officer, employee, or representative for special consideration in the award of said solid waste agreement.

Proposer is not aware of any other pending legal actions against Proposer with respect to contracts for solid waste handling services, alleged safety violations, including OSHA violations, and other alleged violations of applicable labor laws other than those Proposer disclosed in its Request for Proposal submittal.

Executed under penalty of perjury on this _____ day of _____, at _____

BY:

TITLE:

Subscribed and sworn to before me this _____ day of, _____

(Seal of Notary)

Signature of Notary

Attachment 6

CORPORATRGUARANTY

THIS GUARANTY (the "Guaranty") is given as of the ___ day of ___, 2014, and is made with reference to the following facts and circumstances:

A. _____, hereinafter ("Contractor") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by _____ ("Guarantor").

B. Contractor and the City of Dunsmuir ("the City") have negotiated a franchise agreement entitled "Agreement Between the City of Dunsmuir and _____ for Solid Waste Handling Services" dated as of _____ (hereinafter "Agreement"). A copy of this Agreement is attached hereto.

C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Contractor's performance of the Agreement.

D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely payment, performance, satisfaction and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to pay, perform, satisfy or observe. In the event that Contractor fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully pay, perform, satisfy or observe them in the place of the Contractor or cause them to be paid, performed, satisfied or observed (including by causing the services required of Contractor to be performed by a Solid Waste Enterprise acceptable to City). Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Contractor due to its breach of the Agreement. Guarantor further agrees to indemnify City against any losses City may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by City of any of its rights and remedies under the Agreement, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by City of any of its rights against Guarantor hereunder.

2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and, with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall

be entitled to all defenses, if any, that would be available to the Contractor in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of Contractor; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against Contractor; or (4) any merger or consolidation of Contractor with any other corporation, or any sale, lease or transfer of any or all the assets of Contractor. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Sections 2845, 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the City to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. Term. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this

Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder as long as there is any claim by the City against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.

5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations, Guaranty shall pay City's reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts with venue resting in Siskiyou County. Guarantor appoints the following Person as its agent for service of process in California:

With a copy by certified mail to:

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

Attachment 7

PERSONAL GUARANTY

THIS GUARANTY (the "Guaranty") is given as of the 1st day of _____ 2018, and is made with reference to the following facts and circumstances:

- A. _____ ("Personal Guarantor") is the _____ of" _____ a California Corporation ("Contractor").

- B. Personal Guarantor is the beneficial owner of approximately _____ of the equity of Contractor.

- B. Contractor has entered a franchise agreement with the City of Dunsmuir ("City") with an Effective Date of _____ entitled "Agreement Between City of Mt. Shasta and _____ for Solid Waste Handling Services" (the "Franchise").

- C. It is a requirement of the Franchise that Personal Guarantor guarantee Contractor's performance of the Franchise.

- D. Personal Guarantor is providing this Guaranty to induce the City to approve the Franchise.

NOW, THEREFORE, in consideration of the foregoing, Personal Guarantor agrees as follows:

1. Guaranty of the Franchise. Personal Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Contractor of each and every term and condition of the Franchise which Contractor is required to pay, perform, satisfy or observe. In the event that Contractor fails to pay, perform, satisfy or observe any of the terms and conditions of the Franchise Personal Guarantor will promptly and fully pay, perform, satisfy or observe them in the place of the Contractor (including by causing the services required of Contractor to be performed by a Solid Waste Enterprise acceptable to City). Personal Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Contractor due to its breach of the Franchise. Personal Guarantor further agrees to indemnify City against any losses City may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by City of any of its rights and remedies under the Agreement, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by City of _____ any of its rights against Personal Guarantor hereunder.

2. Personal Guarantor's Obligations Are Absolute. The obligations of the Personal Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and, with respect to any payment obligation of Contractor under the Franchise, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Franchise. In any action brought against the Personal

Guarantor to enforce, or for damages for breach of, his obligations hereunder, the Personal Guarantor shall be entitled to all defenses, if any, that would be available to the Contractor in an action to enforce, or for damages for breach of the Franchise (other than discharge of, or stay of proceedings to enforce, obligations under the Franchise under bankruptcy law).

3. Waivers. Except as provided herein the Personal Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from his obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Contractor; (2) the actual or purported rejection by a trustee in bankruptcy of the Franchise, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Franchise; (3) any waiver with respect to any of the obligations of the Franchise guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Contractor; or (4) any merger or consolidation of the Contractor with any other corporation, or any sale, lease or transfer of any or all the assets of the Contractor. Without limiting the generality of the foregoing, Personal Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Personal Guarantor hereby waives any and all benefits and defenses under California Civil Code Sections 2845, 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Personal Guarantor's benefit, and agrees that the City may proceed against Personal Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Personal Guarantor hereby waives and agrees to waive at any future time at the request of the City to the extent now or then permitted by applicable law, any and all rights which the Personal Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of his obligations under, or to terminate, cancel, quit or surrender this Guaranty.

The Personal Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Personal Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Personal Guarantor or Contractor prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. Term. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Franchise have been fully performed or

otherwise discharged and Personal Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Franchise. Personal Guarantor shall not be released of his obligations hereunder as long as there is any claim by the City against Contractor arising out of the Franchise based on Contractor's failure to perform which has not been settled or discharged.

5. No Waivers. No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Personal Guarantor shall be a waiver of any obligation of Personal Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Personal Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. Attorney's Fees. In addition to the amounts guaranteed under this Guaranty, Personal Guarantor agrees in the event of Contractor's breach of its obligations to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. Governing Law: Jurisdiction. This Guaranty is and shall be deemed to be a contract entered into in, and pursuant to the laws of, the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Personal Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Personal Guarantor consents to personal jurisdiction over it by such courts, with venue resting in Siskiyou County, California.

8. Severability. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. Binding on Successors. This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Personal Guarantor and his heirs and/or assigns.

10. Prohibition Against Assignment. Personal Guarantor may not assign his obligations herein without the City's prior written consent.

11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the City:
To the Personal
Guarantor: [address]

Personal Guarantor:

By: _____

Title: _____

RESOLUTION NO. 2020-19

A RESOLUTION OF THE CITY COUNCIL HONORING THE SERVICE OF SHERIFF JON LOPEY TO SISKIYOU COUNTY AND THE CITY OF DUNSMUIR

Whereas, Sheriff Jon Lopey has served as a peace officer in California for nearly 41 years; and,

Whereas, his educational background includes a B.A. Degree in Criminal Justice and a Master's Degree in Justice Management (University of Nevada-Reno), as well as advanced training at the FBI National Academy; and,

Whereas, Jon Lopey's distinguished career includes an admirable record of success with the California Highway Patrol, serving as field officer, Sergeant, Lieutenant, Captain, and Assistant Chief of the CHP; and,

Whereas, Jon first took office as Siskiyou County Sheriff-Coroner in January, 2011, and won three terms with strong support from the citizens of our County; and,

Whereas, Sheriff Jon Lopey has announced his decision to retire effective September 18, 2020; and,

Whereas, The Siskiyou County Sheriff's Office has done an outstanding job of providing professional law enforcement services to Dunsmuir's residents and businesses during Sheriff Lopey's tenure, even during the difficult budget challenges of the past several years; and,

Whereas, Jon and Maxine Lopey created the Sheriff Lopey Foundation in 2011 to further their devotion to the charitable needs of those throughout Siskiyou County; and,

Whereas, Jon Lopey is a distinguished member of the U.S. Armed Forces, a tireless advocate for military veterans, and, with assistance from the Jon Lopey Foundation, was an essential force behind the creation of a Veteran's Memorial flagpole and benches in Dunsmuir's City Cemetery; and,

Whereas, thanks to the vision and generosity of Sheriff Lopey, the SCSO's Work Alternative Program crafted a sturdy picnic table and bench that now grace the Dunsmuir Community Garden in support of our Community Resource Center, adding to the enjoyment of citizens and visitors alike; now,

Therefore, be it resolved by unanimous proclamation that Jon Lopey deserves the highest accolades and official recognition of his four decades of extraordinary law enforcement service to the State of California and the County of Siskiyou, and be it further resolved that he and Maxine enjoy his well-deserved retirement.

AYES:

NOES:

ABSENT:

ABSTAIN:

Juliana Lucchesi, Mayor, City of Dunsmuir **STATE OF CALIFORNIA**

City of Dunsmuir

I, Wendy Perkins, Deputy City Clerk of the City of Dunsmuir, State of California, hereby certify the above and foregoing to be a full, true and correct copy of a resolution adopted by said City Council of the City of Dunsmuir on this Third day of September, 2020.

Wendy Perkins, Deputy City Clerk of City of Dunsmuir
State of California



***Annual Conference
Resolutions Packet***

2020 Annual Conference Resolutions



October 7 – 9, 2020

INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, one resolution has been introduced for consideration at the Annual Conference and referred to League policy committees.

POLICY COMMITTEES: Two policy committees will meet virtually at the Annual Conference to consider and take action on the resolution referred to them. The committees are: Governance, Transparency & Labor Relations and Public Safety. These committees will meet virtually on Tuesday, September 29, with the Governance, Transparency and Labor Relations Policy Committee meeting from 9:30 – 11:30 a.m. and the Public Safety Policy Committee meeting from 1:00 – 3:00 p.m. The sponsor of the resolution has been notified of the time and location of the meeting.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet virtually at 1:00 p.m. on Thursday, October 8, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of the League's regional divisions, functional departments and standing policy committees, as well as other individuals appointed by the League president.

GENERAL ASSEMBLY: This meeting will be held virtually at 11:00 a.m. on Friday, October 9.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Annual Business Meeting of the General Assembly. This year, that deadline is 12:30 p.m., Thursday, October 8.

Any questions concerning the resolutions procedures may be directed to Meg Desmond at the League office: mdesmond@cacities.org or (916) 658-8224

GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within the League. The principal means for deciding policy on the important issues facing cities is through the League's seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop League policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing League policy.
4. The resolution should be directed at achieving one of the following objectives:
 - (a) Focus public or media attention on an issue of major importance to cities.
 - (b) Establish a new direction for League policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
 - (c) Consider important issues not adequately addressed by the policy committees and board of directors.
 - (d) Amend the League bylaws (requires 2/3 vote at General Assembly).

KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number	Key Word Index	Reviewing Body Action		
		1	2	3

1 - Policy Committee Recommendation to General Resolutions Committee
 2 - General Resolutions Committee
 3 - General Assembly

GOVERNANCE, TRANSPARENCY & LABOR RELATIONS POLICY COMMITTEE

		1	2	3
1	Amendment to Section 230 of The Communications Decency Act of 1996			

PUBLIC SAFETY POLICY COMMITTEE

		1	2	3
1	Amendment to Section 230 of The Communications Decency Act of 1996			

KEY TO ACTIONS TAKEN ON RESOLUTIONS (Continued)

Resolutions have been grouped by policy committees to which they have been assigned.

KEY TO REVIEWING BODIES

- 1. Policy Committee
- 2. General Resolutions Committee
- 3. General Assembly

KEY TO ACTIONS TAKEN

- A Approve
- D Disapprove
- N No Action
- R Refer to appropriate policy committee for study
- a Amend+
- Aa Approve as amended+
- Aaa Approve with additional amendment(s)+
- Ra Refer as amended to appropriate policy committee for study+
- Raa Additional amendments and refer+
- Da Amend (for clarity or brevity) and Disapprove+
- Na Amend (for clarity or brevity) and take No Action+
- W Withdrawn by Sponsor

ACTION FOOTNOTES

- * Subject matter covered in another resolution
- ** Existing League policy
- *** Local authority presently exists

Procedural Note:

The League of California Cities resolution process at the Annual Conference is guided by the League Bylaws. A helpful explanation of this process can be found on the League’s website by clicking on this link: [Resolution Process](#).

1. A RESOLUTION OF THE GENERAL ASSEMBLY OF THE LEAGUE OF CALIFORNIA CITIES CALLING FOR AN AMENDMENT OF SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF 1996 TO REQUIRE SOCIAL MEDIA COMPANIES TO REMOVE MATERIALS WHICH PROMOTE CRIMINAL ACTIVITIES

Source: City of Cerritos

Concurrence of five or more cities/city officials

Cities: City of Hawaiian Gardens, City of Lakewood, City of Ontario, City of Rancho Cucamonga, City of Roseville

Referred to: Governance, Transparency and Labor Relations and Public Safety Policy Committees

WHEREAS, local law enforcement agencies seek to protect their communities' residents, businesses, and property owners from crime; and

WHEREAS, increasingly, criminals use social media platforms to post notices of places, dates and times for their followers to meet to commit crimes; and

WHEREAS, Section 230 of the Communications Decency Act of 1996 currently provides online platforms (including social media platforms) immunity from civil liability based on third-party content and for the removal of content; and

WHEREAS, in the 25 years since Section 230's enactment, online platforms no longer function simply as forums for the posting of third-party content but rather use sophisticated algorithms to promote content and to connect users; and

WHEREAS, the United States Department of Justice, in its June 2020 report, "Section 230 — Nurturing Innovation or Fostering Unaccountability?," concluded the expansive interpretation courts have given Section 230 has left online platforms immune from a wide array of illicit activity on their services, with little transparency or accountability, noting it "makes little sense" to immunize from civil liability an online platform that purposefully facilitates or solicits third-party content or activity that violates federal criminal law; and

WHEREAS, current court precedent interpreting Section 230 also precludes state and local jurisdictions from enforcing criminal laws against such online platforms that, while not actually performing unlawful activities, facilitate them; and

WHEREAS, amendment of Section 230 is necessary to clarify that online platforms are not immune from civil liability for promoting criminal activities; and

NOW, THEREFORE, BE IT RESOLVED at the League General Assembly, assembled at the League Annual Conference on October 9, 2020 in Long Beach, California, that the League calls upon the U.S. Congress to amend Section 230 of the Communications Decency Act of 1996 to condition immunity from civil liability on the following:

1. Online platforms must establish and implement a reasonable program to identify and take down content which solicits criminal activity; and
2. Online platforms must provide to law enforcement information which will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity; and
3. An online platform that willfully or negligently fails in either of these duties is not immune from enforcement of state and local laws which impose criminal or civil liability for such failure.

Background Information to Resolution

Source: City of Cerritos

Background:

Social media platforms are now used as a primary means of communication, including by criminals who use them to advertise locations, dates, and times where the criminal acts will take place. Such communications, because they occur online, render the online platform immune from any civil liability for the costs incurred by law enforcement agencies that respond under Section 230 of the Communications Decency Act of 1996. Immunity from civil liability extends even to injunctive relief, thus preventing local governments from merely seeking an injunction against the online platform to have such a post removed.

The City of Cerritos supports the rights of free speech and assembly guaranteed under the First Amendment, but believes cities should have the ability to hold social media companies liable for their role in promoting criminal acts. Recently, the City suffered thousands of dollars in damages to respond to online threats that the Cerritos Mall would be looted. Anonymous posts on Instagram.com invited followers to “work together to loot Cerritos [M]all” only several days after the Lakewood Mall had been looted, causing thousands of dollars in damages. The posts were made under the names “cerritosmalllooting” and “cantstopusall,” among others. The City of Cerritos had no choice but to initiate response to protect the Mall and the public from this credible threat.

At the same time local governments face historic shortfalls owing to the economic effects of COVID-19, the nation’s social media platforms are seeing a record rise in profits. The broad immunity provided by Section 230 is completely untenable. Online platforms should be held responsible—and liable—for the direct harm they facilitate. Local governments are in no position to bear the costs of the crimes facilitated by these companies alone.

Congress is currently reviewing antitrust legislation and by extension, Section 230’s immunity provisions. The League urges Congress to amend Section 230 to limit the immunity provided to online platforms when they promote criminal activity to provide local governments some measurable form of relief.

League of California Cities Staff Analysis on Resolution No. 1

Staff: Charles Harvey, Legislative Representative
Bijan Mehryar, Legislative Representative
Caroline Cirrincione, Policy Analyst
Johnnie Piña, Policy Analyst

Committees: Governance, Transparency and Labor Relations
Public Safety

Summary:

This resolution states that the League of California Cities should urge Congress to amend Section 230 of the federal Communications Decency Act of 1996 (CDA) to limit the immunity provided to online platforms where their forums enable criminal activity to be promoted.

Ultimately, the policy objectives proposed under this resolution, if enacted, would incentivize social media companies to establish and implement a reasonable program to identify and remove content that solicits criminal activity.

Background:

The City of Cerritos is sponsoring this resolution in reaction to events whereby persons, using social media platforms to coordinate locations, dates, and times for their planned criminal activity, have committed acts of looting and vandalism resulting in both actual economic harm for targeted businesses, and pecuniary loss to cities who used resources to prevent such acts from occurring when such plans are discovered.

For example, just days after the Lakewood Mall had been looted, the City of Cerritos uncovered online communications via social media that persons were planning to target the nearby Cerritos Mall. Consequently, the city felt compelled to undertake measures to protect the Cerritos Mall, costing the city thousands of dollars to guard against what officials believed to be a credible threat.

Staff Comments:

Overview:

While there is certainly an argument to substantiate concerns around censorship, the use of social media as a tool for organizing violence is equally disturbing.

Throughout much of the 2020 Summer, there have been many reports of looting happening across the country during what were otherwise mostly peaceful demonstrations. Combined with the speculation of who is really behind the looting and why, the mayhem has usurped the message of peaceful protestors, causing a great deal of property damage in the process. Likewise, these criminal actions have upended the livelihood of some small business owners, many of whom were already reeling in the wake of the COVID-19 pandemic.

While social media allows people to connect in real time with others all over the world, organized illegal activity using social media is made easier by the anonymous nature of virtual interactions.

Nation's Reaction to the Murder of George Floyd:

Shortly after the senseless killing of George Floyd by law enforcement on May 26, 2020, civil unrest began as local protests in the Minneapolis–Saint Paul metropolitan area of Minnesota before quickly spreading nationwide to more than 2,000 cities and towns across the United States, and in approximately 60 countries in support of the Black Lives Matter movement. Protests unfolded across the country throughout the entire month of June and into July, and persisted in a handful of cities such as Portland and Seattle into the month of August.

Although the majority of protests were peaceful, some demonstrations in cities escalated into riots, looting, and street skirmishes with police. While much of the nation's focus has been on addressing police misconduct, police brutality, and systemic racism, some have used demonstrators' peaceful protests on these topics as opportunities to loot and/or vandalize businesses, almost exclusively under the guise of the "Black Lives Matter" movement. It has been uncovered that these "flash robs"¹ were coordinated through the use of social media. The spontaneity and speed of the attacks enabled by social media make it challenging for the police to stop these criminal events as they are occurring, let alone prevent them from commencing altogether.

As these events started occurring across the country, investigators quickly began combing through Facebook, Twitter, and Instagram seeking to identify potentially violent extremists, looters, and vandals and finding ways to charge them after — and in some cases before — they sow chaos. While this technique has alarmed civil liberties advocates, who argue the strategy could negatively impact online speech, law enforcement officials claim it aligns with investigation strategies employed in the past.

Section 230 and other Constitutional Concerns

At its core, Section 230(c)(1) of the CDA provides immunity from liability for providers and users of an "interactive computer service" who publish information provided by third-party users. Essentially, this protects websites from lawsuits if a user posts something illegal, although there are exceptions for copyright violations, sex work-related material, and violations of federal criminal law.

Protections from Section 230 have come under more recent scrutiny on issues related to hate speech and ideological biases in relation to the influence technology companies can hold on political discussions.

Setting aside Section 230, there are some potential constitutional issues one could raise, should there be an attempt to implement such a resolution into statute.

¹ The "flash robs" phenomenon—where social media is used to organize groups of teens and young adults to quickly ransack and loot various retail stores—began to occur sporadically throughout the United States over the past ten years.

In the United States, the First Amendment prohibits the government from restricting most forms of speech, which would include many proposals to force tech companies to moderate content. While “illegal” types of speech enjoy limited or no First Amendment protection, the line for delineating between “legal” and “illegal” speech is very difficult to determine. Consequently, one would expect online platforms to push back on whether there is a constitutionally feasible way for them to “identify” protected speech versus unprotected speech, or whether there is a feasible way to define “content which solicits criminal activity.” A law requiring companies to moderate content based on the political viewpoint it expresses, for example, would likely be struck down as unconstitutional.

Nonetheless, private companies can create rules to restrict speech if they so choose. Online platforms sometimes argue they have constitutionally-protected First Amendment rights in their “editorial activity,” and therefore, it violates their constitutional rights to require them to monitor (i.e., “identify and take down”) content that may be protected under the First Amendment. They may also argue, along the same lines, that the government may not condition the granting of a privilege (i.e., immunity) on doing things that amount to a violation of their first amendment rights. This is why Facebook and Twitter ban hate speech and other verifiably false information, for example, even though such speech is permitted under the First Amendment.

With respect to privacy and the Fourth Amendment, online platforms may argue that requiring them to “provide to law enforcement information that will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity,” turns them into government actors that search users’ accounts without a warrant based on probable cause, in violation of the Fourth Amendment.

Industry Perspective

Unsurprisingly, industry stakeholders have strong opinions for what such changes could mean for their respective business models.

For instance, a Facebook spokesperson recently noted in a Fortune article that, “By exposing companies to potential liability for everything that billions of people around the world say, this would penalize companies that choose to allow controversial speech and encourage platforms to censor anything that might offend anyone.”

The article acknowledges that in recent years, both political parties have put social media companies under increased scrutiny, but they are not unified in their stated concerns. While Republicans accuse the companies of unfairly censoring their post, Democrats complain that these companies fail to do enough to block misinformation, violent content, and hate speech.

The article concludes that there is no way companies like Facebook and Twitter could operate without Section 230, and that the removal of this section would thereby “eliminate social media as we know it.”

Recent Federal Action on Social Media

The President recently issued an *Executive Order on Preventing Online Censorship*. In it, he notes the following:

“The growth of online platforms in recent years raises important questions about applying the ideals of the First Amendment to modern communications technology. Today, many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other online platforms. As a result, these platforms function in many ways as a 21st century equivalent of the public square.

Twitter, Facebook, Instagram, and YouTube wield immense, if not unprecedented, power to shape the interpretation of public events; to censor, delete, or disappear information; and to control what people see or do not see.”

Ultimately the President implores the U.S. Attorney General to develop a proposal for federal legislation that “would be useful to promote the policy objectives of this order.” The President is not subtle in communicating his desire to ultimately see legislation heavily slanted toward the preservation of free speech on social media, which some interpret as a maneuver to preempt Twitter and Facebook from regulating speech they otherwise deem as hateful or demonstrably false.

Considerations for Congress

Courts have generally construed Section 230 to grant internet service providers broad immunity for hosting others’ content. Many have claimed that Section 230’s immunity provisions were critical to the development of the modern internet, and some continue to defend Section 230’s broad scope. But simultaneously, a variety of commentators and legislators have questioned whether those immunity provisions should now be narrowed, given that the internet looks much different today than it did in 1996 when Section 230 was first enacted.

One way for Congress to narrow Section 230’s liability shield would be to create additional exceptions, as it did with FOSTA and SESTA². If a lawsuit does not fall into one of the express exceptions contained in Section 230(e)³, courts may have to engage in a highly fact-specific inquiry to determine whether Section 230 immunity applies: Section 230(c)(1) immunity will be inapplicable if the provider itself has developed or helped to develop the disputed content, while Section 230(c)(2) immunity may not apply if a service provider’s decision to restrict access to content was not made in good faith.

Date Storage and Usage Considerations for Cities

Section 2 of the conditions the resolution applies to civil immunity requires that online platforms provide relevant information to law enforcement to assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity. This section would most likely require the development of new procedures and protocols that govern law enforcements usage and retention of such information. Those new policies and procedures would undoubtedly raise privacy concerns depending on how wide the latitude is for law

² The Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA) create an exception to Section 230 that means website publishers *would* be responsible if third parties are found to be posting ads for prostitution — including consensual sex work — on their platforms.

³ Section 230(e) says that Section 230 will not apply to: (1) federal criminal laws; (2) intellectual property laws; (3) any state law that is “consistent with” Section 230; (4) the Electronic Communications Privacy Act of 1986; and (5) civil actions or state prosecutions where the underlying conduct violates federal law prohibiting sex trafficking.

enforcement to request such information. In those circumstances cities could end up themselves incurring new liability for the governance of data that could either violate certain privacy rules or increase their data governance costs.

Fiscal Impact:

Unlike the costly resources needed to support or oppose a ballot measure, a federal resolution from the League of California Cities that simply urges Congress to undertake certain action should have a negligible fiscal impact, if any monetary impact at all.

Regarding cities, if social media had no immunity for its failure to police content that solicits criminal activity, then an individual city could theoretically save thousands if not millions of dollars, depending on its size and other subjective circumstances. Collectively, cities across the country could potentially save at least hundreds of millions between redress for actual economic harm suffered and/or the cost of preventative measures taken to stop criminal activity from occurring in the first place.

Conversely, if social media platforms were to shut down, due to an inability to comply with a policy requirement to regulate speech on the internet, it is unclear on how cities might be impacted from a fiscal standpoint.

Existing League Policy:

Public Safety:

Law Enforcement

The League supports the promotion of public safety through:

- Stiffer penalties for violent offenders, and
- Protecting state Citizens' Option for Public Safety (COPS) and federal Community Oriented Police Services (COPS) funding and advocating for additional funding for local agencies to recoup the costs of crime and increase community safety.

Violence

The League supports the reduction of violence through strategies that address gang violence, domestic violence, and youth access to tools of violence, including but not limited to firearms, knives, etc.

The League supports the use of local, state, and federal collaborative prevention and intervention methods to reduce youth and gang violence.

Governance, Transparency & Labor Relations:

Private Sector Liability

The League will work closely with private sector representatives to evaluate the potential for League support of civil justice reform measures designed to improve the business climate in California. These measures should be evaluated on a case-by-case basis through the League police process.

Questions to Consider:

Many cities obviously believe that creating civil liability for social media platforms—due to their role in providing the communication mediums for those who organize looting attacks— is key to deterring this organized criminal activity.

If such a change was actually passed by Congress, it would force social media to essentially police every conversation on stakeholders’ respective platforms, putting immense pressure on the industry to make subjective determinations about what conversations are appropriate and what are unacceptable.

At the end of the day, there are a few questions to consider in assessing this proposed resolution:

- 1) *What would this resolution’s impact be on free speech and government censorship?*
- 2) *What are the expectations for cities when they receive information from a social media platform about a potentially credible threat in their respective communities? Does a city become liable for having information from a social media platform and the threat occurs?*
- 3) *What would the costs be to develop and maintain new data governance policies, including data infrastructure, to store this information?*
- 4) *What is the role of the League in engaging in issues relating to someone’s privacy?*

Support:

The following letters of concurrence were received:

City of Hawaiian Gardens
City of Lakewood
City of Ontario
City of Rancho Cucamonga
City of Roseville

LETTERS OF CONCURRENCE

Resolution No. 1

Amendment to Section 230 of the Communications
Decency Act of 1996



CITY OF HAWAIIAN GARDENS

"Our Youth - Our Future"

August 7, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social medial platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

The public safety efforts in the City of Hawaiian Gardens would certainly benefit from such legislation. This letter serves to support the City of Cerritos in their efforts to submit of the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Ernie Hernandez
City Manager

cc Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us

Jeff Wood
Vice Mayor

Ariel Pe
Council Member

Steve Craft
Council Member

Diane DuBois
Council Member



Todd Rogers
Mayor

August 5, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

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This letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Todd Rogers
Mayor

cc: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us

Lakewood



PAUL S. LEON
MAYOR

SCOTT OCHOA
CITY MANAGER

DEBRA DORST-PORADA
MAYOR PRO TEM

August 6, 2020

SHEILA MAUTZ
CITY CLERK

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

JAMES R. MILHISER
TREASURER

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

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This letter serves to support the City of Cerritos in their efforts to submit the above-mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Alan D. Wapner
Council Member
League of California Cities Board Member

- c: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
- Meg Desmond, League of California Cities - mdesmond@cacities.org
- Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
- Kathy Matsumoto, Assistant City Manager, City of Cerritos – kmatsumoto@cerritos.us



CITY OF RANCHO CUCAMONGA

10500 Civic Center Drive | Rancho Cucamonga, CA 91730 | 909.477.2700 | www.CityofRC.us

August 6, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

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On behalf of the City of Rancho Cucamonga, this letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

L. Dennis Michael
Mayor

cc: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos – kmatsumoto@cerritos.us



City Council
311 Vernon Street
Roseville, California 95678

August 7, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

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On behalf of the City of Roseville, this letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

A handwritten signature in blue ink, appearing to be "John B. Allard II", is written over a horizontal line.

John B. Allard II,
Mayor

Cc: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us
Jason Gonsalves, Joe A. Gonsalves and Son