



SOLID WASTE SERVICES AGREEMENT

BETWEEN

CITY OF DUNSMUIR

AND

CLEMENS WASTE DISPOSAL, INC.

FOR

**SOLID WASTE COLLECTION & DISPOSAL
SERVICES**

September 1st, 2021

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- A. RATE SHEET**
- B. COST PLUS COST PLUS DETAILED RATE METHODOLOGY**
- C. REFUSE RATE INDEX**
- D. SPECIAL RATE REVIEW METHODOLOGY**

ARTICLE 1 DEFINITIONS

1.1 AGREEMENT DEFINITIONS

Unless the context otherwise requires, terms used in this Agreement shall have the meanings set forth in the definitions contained below. Additional definitions used in this agreement are contained in Title 8, Chapter 8.08 of the Dunsmuir Municipal Code.

1.2 STATUTORY DEFINITIONS

Unless a term is otherwise defined in this agreement, terms used in this agreement shall have the same meaning as the definitions of those terms contained in the *California Integrated Waste Management Act of 1989* (“Act”) and the rules and regulations promulgated thereunder. In the event of a conflict between the definition of a term in the *Act* (or its promulgated rules) and in this agreement, the definition in this agreement shall prevail.

1.3 AGREEMENT DEFINITIONS

Affiliate

“Affiliate” means a person who is related to Contractor by virtue of direct or indirect ownership interest or common management. An Affiliate includes a person in which **Contractor** owns a direct or indirect ownership interest, a person which has a direct or indirect ownership interest in **Contractor** and/or a person which is also owned, controlled or managed by any person or individual which has a direct or indirect ownership interest in **Contractor**.

Application

“Application” means the application prepared and submitted by **Contractor** for determination of potential adjustments to the rate for the following Rate Year.

Business Days

“Business Days” means days (i.e., Monday through Friday) during which **Contractor’s** office is open to do business with the public.

Calendar Year

“Calendar Year” means the 12 month period beginning on January 1st and ending on December 31st.

Change in Law

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

- (a) The enactment, adoption, promulgation, issuance, modification, or written change in applicable and enforceable federal, state, local law, regulation, ordinance, order, judgement, decree, permit or administrative or judicial interpretation on or after the date that any such applicable and enforceable federal, state, local law, regulation, ordinance, order, judgement, decree, permit or administrative or judicial

interpretation was enacted, adopted, promulgated, issued, modified or changed in writing.

- (b) The order or judgment of any governmental body, on or after the date such order or judgment was given, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of **City**, or of **Contractor**, whichever is asserting the occurrence of a Change In Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute such a willful or negligent action, error or omission or lack of reasonable diligence.

Collection Costs

“Collection Costs” means all of **Contractor’s** costs to provide collection services as described in the agreement, including fuel costs, labor costs, vehicle and vehicle-related costs, maintenance, insurance, overhead and transportation costs, but excluding Pass-Through Costs (See “Pass-Through Costs”) and Profit (See “Profit”).

Commercial Premises

“Commercial Premises” means property upon which a business activity is conducted, including but not limited to restaurants, retail sales, services, manufacturing, assembling, storage, or wholesale operations. Commercial Premises also include hotels, senior citizen housing complexes, convalescent centers, and any premises used for residential occupancy having more than one Dwelling Unit.

Container

“Container” means any receptacle, cart, bin, container, debris box used for storage of Solid Waste, Recyclable Materials, Green Waste/Organic Materials, C&D debris and other materials collected and put into service pursuant to this Agreement.

Contractor Pass-Through Costs

“Contractor Pass-Through Costs” means the costs to which no element of overhead, administrative expense, or Profit, is added, such that the specific amount of such cost is included without modification in the calculations or reports prepared in implementing this agreement.

Day

“Day” means Calendar Day unless otherwise specified.

Designated Disposal Facility

“Designated Disposal Facility” means the Black Butte Transfer Station, as long as it is feasible. For Blue Bags only, the Designated Disposal Facility shall be the Siskiyou Opportunity Center recyclables facility. **Contractor** and **City** may agree upon an alternative Designated Disposal Facility if Black Butte Transfer Station ceases to be feasible.

Designated Transfer Facility

“Designated Transfer Facility” means the Black Butte Transfer Station, as long as it is feasible. For Blue Bags only, the Designated Transfer Facility shall be the Siskiyou Opportunity Center recyclables facility. **Contractor** and **City** may agree upon an alternative Designated Transfer Facility if Black Butte Transfer Station ceases to be feasible.

Disposal Costs

“Disposal Costs” means **Contractor’s** costs to deposit solid waste collected under this agreement at the designated disposal site.

Effective Date

“Effective Date” means the date identified in Section 3.1.

Feasible

“Feasible” means “suitable and capable of being used conveniently and within reason.”

Fiscal Year

“Fiscal Year” means the period commencing Aug 1st through July 31st each year.

Force Majeure

“Force Majeure” means acts of terrorism, acts of God, landslides, lightning, forest fires, severe storms, typhoons, hurricanes, severe weather, extreme freezing temperatures, earthquakes, volcanic eruptions, other natural disasters, or the imminent threat of such natural disasters, pandemics, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, strikes, lockouts, or other labor disturbances involving a third party’s employees, acts of government or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of **Contractor**.

Fuel Costs

“Fuel costs” means **Contractor’s** costs for diesel, gasoline and other fuels used in providing the services described in this agreement.

Green Waste

“Green Waste” means organic compost material, tree trimmings, wood stumps, small pieces of wood, grass cuttings, dead plants, leaves, branches, flowers, plant stocks, and dead trees (not more than six (6) inches in diameter or forty-eight (48) inches in length) and similar materials. Green Waste is a subset of Organic Waste.

Gross Receipts

“Gross Receipts” means the total revenue actually received in cash by **City** for all services provided to customers during the Rate Year in question. Revenues are billed by the **City** to customers. Gross Receipts also include any revenue received by **City** from the sale of recyclable materials, C&D or other recyclable materials.

Gross Revenue Billed

“Gross Revenue Billed” means the total revenue billed to customers, as recognized by generally accepted accounting principles by **City** for all services provided to customers during the rate year in question.

Includes (or Including)

“Includes” or “Including” means “includes, but is not limited to,”

Inquiry

“Inquiry” means a written or orally communicated request for information, request for collection services, or request for change in service level made by members of the public, customers, owners, or occupants of properties served by **Contractor**, or by officers, employees or agents of **City**.

Multi-Family Dwelling (MFD)

“Multi-Family Premises” means a premises having three (3) or more Dwelling Units.

Non-Allowable Cost(s)

“Non-Allowable Costs” means those contract-related costs deemed non-allowable in Attachment B of this agreement.

On-Call Service

“On-Call Service” means collection service provided by **Contractor** that is not regularly scheduled or is scheduled more than twenty-four (24) hours in advance. On-Call Service is initiated by customer by calling, emailing, or requesting the service in person at **Contractor’s** office and/or Dunsmuir City Hall.

Operating Cost

“Operating Cost” or “Cost of Operations” means those costs actually incurred by **Contractor**, reasonably necessary to perform under this agreement, and not otherwise specifically excluded in this agreement.

Operating Ratio

“Operating Ratio” means the ratio, expressed as a percentage, of the net operating costs actually incurred by **Contractor**, exclusive of Pass-Through Costs and Non-Allowable Costs, divided by **Contractor’s** net income, as produced by the rates that are applied to the services provided under this agreement. The Operating Ratio for this agreement shall range from 87.5% to 90.00%, and the rates shall be adjusted as necessary through the RRI, Special Rate Review, Cost Plus Detailed Rate Review or Change in Service Rate Review to maintain an Operating Ratio within that range.

Organic Waste (Organics)

“Organic Waste” or “Organics” has the meaning defined in Public Resources Code Section 42649.8(c), generally consisting of Food Waste, Green Waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with Food Waste.

Party or Parties

“Party or Parties” refers to the **City** and **Contractor**, individually or together.

Pass-Through Cost (or Costs)

“Pass-Through Cost” (or Costs) means a cost to which no element of overhead, administrative expense, or Profit is added, such that the specific amount of such cost is included without modification in the calculations or reports prepared in implementing this agreement, including, without limitation and fees payable by **Contractor** to **City** or any other government agency on the services.

Processing Costs

“Processing Costs” means **Contractor’s** costs to process recyclables collected under this agreement at the designated transfer facility or facilities.

Profit

“Profit” means **Contractor’s** Profit for providing services described in this agreement.

Public Records

“Public Records” means reports, records and other information submitted by **Contractor** to **City**.

Rate Year

“Rate Year” means the twelve-month period, commencing January 1 of one Calendar Year and concluding December 31 of the next Calendar Year, for which the rates are calculated.

Recyclable Materials (Recyclables)

“Recyclable Materials” or “Recyclables” means Solid Waste that has some potential economic value, and is set aside, handled, packaged, or offered for Collection in a manner different from Refuse in order to allow it to be processed for Recycling.

Regulatory Costs

“Regulatory Costs” means all regulatory and other governmental fees and charges incurred by **Contractor** in connection with providing the services described in this agreement.

Related Party Entity

“Related Party Entity” means any affiliate which has financial transactions with **Contractor** pertaining to this agreement.

Service Opportunity

“Service Opportunity” means each individual opportunity **Contractor** has to collect solid waste and recyclable materials from a customer’s container which is equivalent to the required single-family, multi-family and commercial lifts.

Single Family Residence (SFD)

“Single-Family Premises” means premises having fewer than three (3) Dwelling Units.

Solid Waste

“Solid Waste” has the meaning defined in Public Resources Code Section 40191, including all putrescible and nonputrescible solid and semi-solid waste, generated in or upon, related to the occupancy or, remaining in or emanating from Residential Premises or Commercial Premises, including Recyclable Materials, Green Waste, Organic Waste, , garbage, trash, refuse, paper, rubbish, ashes, industrial waste, discarded home and industrial appliances, manure, vegetable or animal solid wastes, and other solid and semi-solid waste, excluding liquid wastes, decaying animals abandoned vehicles, Hazardous Waste, and medical waste.

Term

“Term” means the term of this agreement as described in Article 3.

ARTICLE 2
REPRESENTATION AND WARRANTIES OF CONTRACTOR

Contractor represents and warrants, as of the date of this agreement, the following:

2.1 CORPORATE STATUS

Contractor is an LLC, duly organized, validly existing and in good standing under the laws of the State of California, and is qualified to do business in the State of California.

2.2 CORPORATE AUTHORIZATION

Contractor has the authority to enter into and perform its obligations under this agreement. The **Contractor** has taken all actions required by law, the articles of incorporation and bylaws or otherwise to authorize the execution of this agreement.

2.3 AGREEMENT DULY EXECUTED

The persons signing this agreement on behalf of **Contractor** have been authorized to do so and this agreement constitutes a legal, valid and binding obligation of **Contractor**.

2.4 NO CONFLICT WITH APPLICABLE LAW OR OTHER DOCUMENTS

Neither the execution and delivery by **Contractor** of this agreement, nor the performance by **Contractor** of its obligations hereunder, subject to availability and feasibility of infrastructure:

- A. Conflicts with, violates or will result in a violation of any existing applicable law; or
- B. Conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing contract or instrument to which **Contractor** is a party or by which **Contractor** is bound.

2.5 NO LITIGATION

There is no action, suit, proceeding, or investigation at law or in equity, before or by any court or governmental entity, pending or threatened against **Contractor**, or otherwise affecting **Contractor**, wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would:

- A. Materially and adversely affect **Contractor's** performance hereunder,
- B. Adversely affect the validity or enforceability of this agreement, or
- C. Have a material adverse effect on the financial condition of **Contractor** or the entity providing the guaranty of **Contractor's** performance.

2.6 FINANCIAL CONDITION

Contractor has made available to the **City** information on its financial condition. The **Contractor** recognizes that the **City** has relied on this information in evaluating the sufficiency of the **Contractor's** financial resources to perform this agreement. To the best of the **Contractor's** knowledge, this information is complete and accurate, does not contain any material misstatement of fact, and does not omit any fact necessary to prevent the information provided from being materially misleading.

2.7 ABILITY TO PERFORM

The **Contractor** has the expertise and professional and technical capability to perform all of its obligations under this agreement. All services are to be provided by the **Contractor** pursuant to this agreement and shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence, and skill ordinarily exercised by professional contractors in similar fields and circumstances in accordance with sound professional practices. **Contractor** also warrants that it is familiar with all laws that may affect its performance of this agreement and shall advise **City** of any changes in any laws that may affect **Contractor's** performance of this agreement.

ARTICLE 3 TERM OF AGREEMENT

3.1 EFFECTIVE DATE

The Effective Date of this agreement shall be September 1st, 2021. This agreement supersedes and replaces the prior solid waste services agreement between the **Contractor** and the **City**, and all amendments and extensions thereof. Any and all such prior agreements, amendments or extensions shall terminate on the Effective Date of this agreement.

3.2 TERM

The term of this agreement shall begin on the Effective Date and shall end at midnight on December 31, 2029 unless earlier terminated, or extended as otherwise provided for in this Agreement. **Contractor's** obligation to collect all municipal waste streams including solid waste, recyclable materials, green waste/organics within the **City**, and transport such solid waste, including recyclable materials to a designated transfer site, disposal site or landfill, shall commence on the Effective Date, provided that this agreement is fully executed and the conditions of Section 3.4 are met and shall continue for the remainder of the Term.

3.3 EXTENSION OF TERM

Contractor shall have the sole discretion to extend the term for up to two five (5) year periods, upon the terms and conditions herein, or upon such terms and conditions to be renegotiated at least 3 months prior to each renewal period, at the mutual discretion of the parties. Unless the **Contractor** notifies the **City** in writing that it does not wish to exercise its option(s) to extend the term of the Agreement at least 6 months prior to the end of the then current term, the term will automatically be extended as provided for above. Extensions under this Section are subject to the

City's consent, which consent shall not be unreasonably withheld if **Contractor** is in compliance with the terms and conditions herein.

3.4 CONDITIONS AS TO EFFECTIVE DATE OF THIS AGREEMENT

The obligation of the Parties to perform under this agreement is subject to the right of approval of this agreement by the Dunsmuir City Council, and that such right shall have become effective, pursuant to California law, on or before the Effective Date.

- A. ***Obligation of Contractor to perform.*** The obligation of **Contractor** to perform under this agreement is also subject to the satisfaction of the conditions set forth below:
 - 1. ***Accuracy of representations.*** The representations and warranties made by **Contractor** in Article 2 shall be true and correct on and as of the Effective Date.
 - 2. ***Proof of Insurance.*** **Contractor** shall have provided **City** with satisfactory proof of insurance as required herein.
- B. ***Notice.*** Execution of this Agreement by both Parties represents an acknowledgement that they are satisfied with the terms and conditions contained herein. If either Party wishes to assert that a condition for its benefit has not been satisfied and has not been waived, it must deliver written notice to that effect to the other Party on or before the Effective Date. If no such notice is received, the agreement will become effective on the Effective Date.
- C. ***Good Faith.*** Each Party is obligated to perform in good faith the actions, if any, which this agreement requires it to perform before the Effective Date and to cooperate towards the satisfaction of the conditions set forth above.

ARTICLE 4 SCOPE OF AGREEMENT

4.1 SCOPE OF AGREEMENT

Through this agreement, the **City** grants to the **Contractor** an exclusive service, for all areas within the **City's** control, except as provided in Section 4.2, to collect, transport and dispose of the following materials:

- A. Solid waste generated at residential, multi-family residences and commercial premises;
- B. Comingled recyclable materials generated and set out at residential, multi-family residences and commercial premises;
- C. Green waste and Organics at residential, multi-family residences and commercial premise, when required by State Law.

4.2 LIMITATIONS ON SCOPE

City may permit the collection, recycling and/or disposal at any legally permitted designated solid waste facility of any of the following materials by persons other than **Contractor** without seeking or securing any approval from **Contractor**.

- A. Recyclable materials which are by the generator and donated to youth, civic, or charitable organizations;
- B. Recyclable beverage containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500 *et seq.* California Public Resources Code;
- C. Medical Waste;
- D. By-products of sewage treatment including sludge, sludge ash, grit, and screenings;
- E. Hazardous waste, household hazardous waste (during household waste disposal events), and infectious waste with appropriate precautions at an approved infectious waste facility;
- F. E-waste and universal waste, including household batteries, fluorescent light bulbs and mercury switches;
- G. Materials generated by governmental facilities which are exempt from the agreement by applicable law), provided that the generator has arranged services with the person collecting same through a separate agreement;
- H. Green waste removed from premises by a gardening, landscaping or tree trimming company, using its own equipment, vehicles, employees and transportation as an incidental part of the total service offered by the company, as opposed to a hauling service.

4.3 ADMINISTRATION BY CITY

The City has designated the City Manager to act as the Contract Manager (hereinafter “Manager”) for this agreement. The Manager, or their designee, shall be **Contractor’s** contact for all inquiries, complaints and other communications from the **Contractor** for the Term of this agreement. All reports, financial statements, insurance information and any other correspondence required from **Contractor** by the terms of this agreement shall be provided by the **Contractor** to the Manager or their designee. Solid waste issues that may arise during the Term of this agreement may be brought up for consideration by either of the Parties at any time. Excepting actual or potential legal disputes requiring confidentiality, issues requiring further discussion and/or a decision which materially affects the terms and conditions herein may be placed on the agenda by either Party for a hearing before the Dunsmuir City Council. The Manager will consider the issue and may make a recommendation to the Council, who retain the responsibility for the final decision.

4.4 ENFORCEMENT BY THE CITY

The burden of enforcement of the provisions of this agreement, found in Title 6, Chapter 6.04 of the Dunsmuir Municipal Code , and of the *California Integrated Waste Management Act of 1989*, and all other pertinent local, State and federal laws pertaining to the Dunsmuir City solid waste program shall be borne by the **City** as follows:

- A. Manager, or their designee, shall oversee and be responsible for the enforcement of violations to all public health and safety solid waste matters concerning the rights and obligations of **Contractor** and **City** provided in this Agreement. The determination as to whether a specific waste product is environmental health-related may be obtained by contacting the Department of Environmental Health.
- B. Manager shall oversee and be responsible for the enforcement of violations and infringement of the exclusivity provisions in this Agreement.
- C. The **Contractor** has the exclusive rights for the collection, removal, transport, use and disposal of all materials as provided for in Section 4.1, exceptions noted in Sections 4.2 and 4.3 of this agreement. The **City** shall use all reasonable remedies available to it to ensure that those rights are enforced, including such enforcement measures described in Section 6.04 of the Dunsmuir Municipal Code and such other measures as otherwise allowable, against third party violators. **Contractor** may, after consultation with and approval by **City**, independently seek enforcement of those rights against third party violators, including, but not limited to seeking injunctive relief.
- D. **Contractor** shall notify **City** of any person or entity perceived to be in violation of **Contractor's** exclusive rights hereunder, and such person or entity shall be advised in writing by **City** to immediately cease such activities after **City** has investigated and verified such actions. If such person or entity continues to violate **Contractor's** exclusive rights after notification by the **City**, such person or entity shall be subject to all applicable penalties available under local and/or State law. Additionally, the **Contractor** shall have the right to impound any non-**Contractor**-owned waste container used in violation of **Contractor's** exclusive rights or any other applicable legislative requirements described in the applicable Title 6, Chapter 6.04 of the Dunsmuir Municipal Code, the *California Integrated Waste Management Act of 1989*, and all other pertinent local, State and federal laws pertaining to the **City's** solid waste program. Nothing in this provision shall limit **Contractor's** independent right to enforce its exclusive rights through any legal means.
- E. Notwithstanding **Contractor's** right to independently enforce its exclusive rights through any legal means necessary, City shall retain all of its rights with regard to pursuing or not pursuing remedies concerning violations or alleged violations of **City's** solid waste ordinance or other ordinances. Any and all prosecutorial discretion shall lie solely and absolutely with the **City**.

ARTICLE 5 COLLECTION SERVICES

5.1 GENERAL

The work to be performed and services to be provided by the **Contractor** includes the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the work and provide the services described, at the times and in the manner required by this agreement. The enumeration of and specification of requirements for, particular items of labor, supervision, equipment, materials, or supplies shall not relieve **Contractor** of the duty to furnish all others, as may be required, whether enumerated elsewhere in the agreement or not. **Contractor** shall perform the work and provide the services pursuant to this agreement in a thorough and professional manner so that the residents and businesses within the **City** are provided reliable, high-quality service at all times. The enumeration of, and specification of the requirements for, particular aspects of service quality shall not relieve the **Contractor** of the duty of accomplishing all other aspects in the manner provided in this article, whether such other aspects are enumerated elsewhere in the agreement or not.

5.2 SOLID WASTE COLLECTION

- A. ***Single-Family Dwellings (SFD)***. The **Contractor** shall collect curbside solid waste from SFD once per week from **Contractor**-provided carts. The **Contractor** shall collect containers curbside. The **Contractor** shall make reasonable accommodations with regard to provision and servicing of containers (e.g. container size and type, placement of containers for collection etc.) at no additional cost to customers demonstrating a qualifying handicap supported by a physician's letter describing their inability to place the container at the curb. Qualifying handicap service recipients must also provide evidence that no other occupant of the residential premises is physically able to place carts curbside for collection. New service recipients shall be notified upon signing up of the availability of handicap service.

- B. ***Multi-Family Dwellings (MFD)***. The **Contractor** shall collect refuse from MFD once per week. Unless authorized by the **Contractor**, MFD customers shall use **Contractor**-provided carts or bins for solid waste collection that are shared by the occupants of the premises. **Contractor** shall provide one (1) or more cart(s) or bin(s) to such customers as requested by the customer, provided that equivalent capacity of not less than two (2) ninety-five (95) gallon containers are provided for every 3 dwelling units in the MFD complex. The **Contractor** shall give special consideration when determining the collection location for MFD complexes to ensure that the flow of traffic is not impeded.

- C. ***Commercial Premises***. The **Contractor** may allow each commercial premises to use carts or bins for solid waste collection. The **Contractor** shall provide each customer with a choice of one (1) or more carts or bins..

1. **Centralized Bin or Cart Service.** *The Contractor* may allow each commercial premises to use carts or bins for refuse collection that are shared by the occupants of two (2) or more adjacent commercial premises. In such cases, the **Contractor** shall provide one or more carts or bins as requested by the customer(s) provided that no less than ninety-five (95) gallons of container capacity is provided for every four (4) commercial premises. **Contractor** shall provide each customer with a choice of one (1) or more carts or bins.

5.3 RECYCLABLE MATERIALS COLLECTION

A. Single Family Dwellings

The **Contractor** shall provide collection of blue 32-gallon recycling containers (currently blue bags) from all SFD in the **City** starting in 2026 (the expiration of the Rural Exemption).

B. Multi-Family Dwellings

The **Contractor** shall provide all MFD premises with a minimum of one 95-gallon blue recycling cart (currently blue bags) for every 3 MFD units starting in 2026 (at the end of the Rural Exemption), and additional blue recycling carts or containers upon request.

- C. **Commercial Premises.** The **Contractor** shall provide all commercial accounts with a minimum of one 95-gallon blue recycling cart (currently blue bags) and additional blue recycling carts or containers at the end of 2026, when the Rural Exemption expires.

- D. **Blue Bag Program.** The **Contractor** will provide each SFD and MFD with up to three (3) Blue Bags per account until the roll out of blue recycling carts in 2026, when the Rural Exemption expires. The **City** shall provide the Blue Bags to the **Contractor**. The **Contractor** shall replenish the Blue Bags to the customer. The Blue Bags collected will be transported by the **Contractor** to the Siskiyou Opportunity Center recyclables facility in Dunsmuir, so long as programs at Siskiyou Opportunity Center remain available and feasible.

- E. **Rejected Loads.** The **Contractor** may reject recyclables that contain excessive amounts of contamination and may tag such loads with a notice to customer(s) describing the contamination. Such rejected recyclables shall be disposed of as solid waste at a facility designated for such disposal at the fees charged to the customer for solid waste disposal.

5.4 GREEN WASTE AND ORGANICS COLLECTION (Required When the Rural Exemption Expires at the end of 2026)

- A. **Single Family Dwellings.** The **Contractor** shall provide all commercial accounts with a minimum of one 32-gallon green recycling cart starting at the end of 2026

(if processing facilities are established within the county) and additional green recycling carts or containers upon request, for collection of green waste and organics.

- B. *Multi-Family Dwellings.*** *The Contractor* shall provide all MFD premises with a minimum of one 95-gallon green cart for every 3 MFD units, and additional green carts or containers upon request, starting by the end of 2026 when the Rural Exemption expires.
- C. *Commercial Premises.*** The **Contractor** shall provide all commercial accounts with a minimum of one 95-gallon green cart and additional green waste carts or containers upon request, starting by the end of 2026 when the Rural Exemptions expires.
- D. *Contractor*** may reject green carts that contain excessive amounts of contamination including solid waste, recyclable materials, painted, treated or stained lumber or other contaminants, or if the green waste is not trimmed to the size specified. Such rejected Green Waste or Organics shall be disposed of as solid waste at a facility designated for such disposal at the fees charged for solid waste disposal.

5.5 COLLECTION FREQUENCY.

- A.** Single Family Dwellings and Multi-Family Dwellings will be collected weekly on those days as determined by the Parties. In addition, Blue Bags will be collected once weekly from residential customers on the same day as scheduled trash pick-up.
- B.** Commercial Accounts that are other than those identified above in subsection A., will be collected at a minimum frequency of once per week. The **Contractor** may make collections more frequently upon request of Customer made to the **Contractor**.
- C.** Commercial Accounts that are restaurants, motels, hotels, food service and public eating-places utilizing bin service will be collected weekly or upon scheduled bin pickup, except Saturdays and Sundays and any days when the Black Butte Transfer Station is not available for disposals, unless otherwise agreed upon by the Contractor and the City. Any collection scheduled when the Black Butte Transfer Station is not available for disposal shall be made on the next available day, unless an alternative schedule has been agreed upon by the City and Contractor. Should the safety and health of business change so that they require additional pick-up days, the **Contractors** will pick-up on Saturdays.
- D. *Contractor*** shall also provide collection of solid waste, green waste/organics, and recyclables from City Hall, the Library, and the Police Department twice per week.

5.6 COLLECTION CONTAINERS.

- A. **Contractor** shall allow SFD, MFD, and commercial accounts to choose a collection service method that best suits the needs of its premises. Specifically, the **Contractor** shall offer the following choices for solid waste and recycling services:
1. **Cart service.** *The Contractor* shall provide a choice of one (1) or more carts at **City** approved rates.
 2. **Bin service.** *The Contractor* shall provide a choice of one (1) or more bins at **City** approved rates.
 3. **Shared Cart or Bin service.** *The Contractor* shall provide customers one (1) or more carts or bins that are shared by the occupants of two (2) or more commercial premises. Upon request the **Contractor** shall provide to customers container locks at the **City** approved fee.
 4. **SB 1383 Cart and Container Color and Labeling Requirements.** **Contractor** shall comply with all SB1383 cart color and labeling requirements by the dates specified in the regulations, if applicable.

5.7 MINIMUM DIVERSION RATE

Contractor shall divert a minimum of four percent (4%) of the residential and commercial material that it collects, excluding debris boxes and compactors, if appropriate infrastructure is available.

5.8 UNSAFE COLLECTION LOCATIONS / WEATHER ACCESS PROBLEMS

The **Contractor** shall not be required to provide collection services where there are unacceptable safety or risk factors, or where weather temporarily prevents safe access. The **City** and the **Contractor** shall establish standards for access to collection points and for inclement weather collections. If unsafe conditions exist or persist, defined according to such standards, the **Contractor** has the right to request a waiver for providing collection services at an unsafe location. If a customer requests service who has an unsafe collection point under such criteria, the **Contractor** and the customer shall agree upon a collection point that is not unsafe, and if they cannot agree, the Manager or the Manager's designee shall determine an appropriate location. If the customer continues to disagree with the chosen location, **Contractor** may discontinue service to that customer without violating this Agreement.

ARTICLE 6 TRANSPORTATION

6.1 TRANSPORTATION OF COLLECTED MATERIALS

The **Contractor** shall be responsible for transporting and delivering all solid waste, recyclable materials, green waste, and all other materials collected by the **Contractor** pursuant to this agreement to the Designated Transfer Facility, the Designated Disposal Site or other **City**

approved facility, as appropriate. Once placed in containers for collection, such materials shall become the property of the **Contractor**.

6.2 CHANGE OF DESIGNATED TRANSFER FACILITY

If the Designated Transfer Facility or Designated Disposal Facility becomes unavailable or otherwise unfeasible, the **Contractor** and the **City** shall work together to identify a feasible alternative.

ARTICLE 7 [RESERVED.]

[This Section Blank]

ARTICLE 8 OTHER SERVICES

8.1 CUSTOMER BILLING

- A. **Billing.** The **City** shall prepare and mail bills for services provided by the **Contractor** and shall collect customer payments.
1. **Frequency.** The **City** shall bill all single-family, multi-family, and commercial customers monthly, in arrears, for amounts equal to the rate services selected by the customer.
 2. **Rates.** The **City** shall establish rates for the types of service provided as described in Article 12.
- B. **Delinquent payment.** As per the City Municipal Code, single-family, multi-family, and commercial customers will be considered delinquent twenty (20) days after the mailing or delivery of the bill for collection services provided by the **Contractor**. A penalty will be assessed on the unpaid balance that remains delinquent on the first day of the month following the mailing or delivery of the bill. All delinquent customers will receive written notice if their bill remains unpaid beyond the twentieth (20th) day of the month following the month during which it was first billed. The **City** may use any other means of collection available under law to collect delinquent accounts, including, but not limited to, termination of service or placing a tax lien on the parcel owner's property taxes, and shall be entitled to recover its costs of collection. Prior to discontinuance of service, the **City** must provide delinquent accounts with notice of intent to terminate service at least fifteen (15) days prior to termination of service.
- C. **Office.** The **Contractor** shall maintain a local office within Siskiyou County, currently located at 450 S 2nd Street, Dunsmuir CA 96025. The local office shall be open for business from 9:00 a.m. until 5:00 p.m. Monday through Friday, exclusive of holidays. **Contractor** may change the address of its local office upon thirty days advance written notice to the **City**.

- D. **Customer Service.** *The Contractor* will provide a phone number which shall be answered by an employee of the **Contractor** to receive service complaints and answer questions regarding service during business hours.
- E. **Privacy of Customer information.** *The Contractor* shall not distribute or sell customer, owner, or occupant information such as names, addresses, and telephone numbers to other persons with the exception of distribution to the **City** or its agents for reporting and contract compliance purposes.
- F. **Website.** *The Contractor* shall maintain and publicize an up-to-date website whereby customers can obtain the information regarding Contractor's services.

8.2 PUBLIC EDUCATION AND PROMOTION

The **Contractor** and the **City** agree that all public education activities will be a collaborative effort between the **City** and the **Contractor**. The **Contractor** shall be responsible for ensuring that its customers consistently receive a high level of service and responsiveness. The **Contractor** acknowledges and agrees that education and public awareness are important elements of any effort to achieve the diversion of recyclable materials from the waste stream. The **Contractor** shall develop an annual Public Education and Outreach Plan. At a minimum, the **Contractor's** Public Education and Outreach Plan shall include:

1. All required SB 1383 residential and commercial Public Education and Outreach

8.3 WASTE GENERATION/CHARACTERIZATION STUDIES

The **Contractor** acknowledges that the **City** may perform solid waste generation and characterization studies periodically, but no more often than once in any five-year period, to determine the composition of collected materials. The **Contractor** agrees to participate and cooperate with the **City** and its agents and to accomplish studies and data collection and prepare reports, as needed, to determine weights and volumes of solid waste and/or recyclable materials and characterize materials generated, disposed, transformed, diverted, or otherwise handled/processed to satisfy requirements of the *Act*.

8.4 PROVISION OF EMERGENCY SERVICES

The **Contractor** shall provide emergency services at the **City's** request in the event of major accidents, disruptions, natural calamities or other emergencies as designated by Federal, State or local authorities. Emergency services may include, but are not limited to: assistance handling, salvaging, processing, composting, or recycling materials; or disposing of solid waste following a major accident, disruption, or natural calamity. The **Contractor** shall be capable of providing emergency services within twenty-four (24) hours of notification by the **City** or as soon thereafter as is reasonably practical in light of the circumstances. The **Contractor** shall be entitled to payment for emergency services rendered at the relevant rates set forth in Attachment A, as amended from time to time, or as negotiated by the **Contractor** and the **City** where relevant rates are not provided therein.

**ARTICLE 9
REQUIREMENTS FOR OPERATIONS, EQUIPMENT
AND PERSONNEL**

9.1 COLLECTION STANDARDS

- A.** *Implementation of services.* The **Contractor** shall be responsible for managing implementation of new collection services and other related services under this Agreement.
- B.** The **Contractor** shall not be required to pick up Solid Waste, Green Waste/Organics, or Recyclables that are not contained in proper containers, bins or Blue Bags.
- C.** *Servicing containers and missed or refused pick-ups*
- 1.** *Missed Pick-Ups.* When notified of a Missed Pick-Up Collection Event, the **Contractor** shall collect the solid waste and recyclable materials as soon as reasonably possible but no later than 7 days, with customer consent. The **Contractor** shall retain the right to bill the customer as noted in the rate schedule shown as Attachment A, as amended from time to time, for returns for Missed Pick-Ups if container(s) was/were not set out for collection during the normal collection hours when the **Contractor's** collection vehicle ordinarily is present for collection.
 - 2.** *Refused Pick-Ups.* The **Contractor** may refuse to collect customer's container under the circumstances as otherwise provided for herein.
- D.** *Set out instructions to Customer.* The **Contractor** shall instruct customers as to any preparation of solid waste, green waste/organics, and/or recyclable materials and the proper placement of containers (carts, bins, blue bags). All customers shall provide the **Contractor** unobstructed and safe access to all containers. If customers are not adhering to the **Contractor's** instructions, the **Contractor** shall notify such customers of the noncompliance. In cases of extreme or repeated failure to comply with the instructions, the **Contractor** may decline to pick-up the solid waste and/or recyclable materials provided that the **Contractor** informs the customer of noncompliance indicating the reason for refusing to collect the material and providing steps to correct noncompliance. The **Contractor** retains the right to indefinitely suspend service for serial violators. In the case of contaminated recyclables or green waste/organics, the **Contractor** may charge the customer for collection and disposal as solid waste (including a return trip charge and an extra solid waste collection charge) at the rates set forth as provided for in the rate schedule shown as Attachment A, as amended from time to time.
- E.** *Customer Waiver.* The **Contractor** may require a property damage waiver from customer where collection service is provided on private roads or driveways which are deemed inadequate in width or load-bearing capacity.

F. Care of private property. Subject to Subsection E., above, *the Contractor* shall not damage private property. The **Contractor** shall ensure that its employees:

1. Close all gates opened in making collections, unless otherwise directed by the customer,
2. Do not cross landscaped areas, and
3. Do not climb or jump over hedges and fences.

G. Litter abatement.

1. **Minimization of spills.** If excessive collection materials are spilled or scattered during collection or transportation operations, caused by the **Contractor**, the **Contractor** shall immediately, at the time of occurrence, clean up all spilled and scattered materials. The **Contractor** shall use due care to prevent vehicle oil, vehicle fuel, or other liquids from being spilled during the collection or transportation operations including maintenance of the collection vehicles to minimize and correct any leaks. Equipment oil, hydraulic fluids, spilled paint or any other liquid or debris resulting from the **Contractor's** collection operations or equipment repair shall be covered immediately with an absorptive material and removed from the street surface. When necessary, the **Contractor** shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. Where applicable, the **Contractor** shall meet or exceed National Pollutant Discharge Elimination System (NPDES) permit requirements for hazardous materials handling, cleanup and reporting.

9.2 VEHICLES

A. General. *The Contractor* shall provide a fleet of collection vehicles sufficient in number and capacity to efficiently perform the work required by the agreement in strict accordance with its terms. The **Contractor** shall have available sufficient back-up vehicles for each type of collection vehicle used (e.g., side loader, front loader, and roll-off vehicles) to respond to mechanical breakdowns, complaints, and emergencies.

B. General vehicle specifications

1. All vehicles used by the **Contractor** in providing solid waste and/or targeted recyclable material services shall be registered with the California Department of Motor Vehicles.
2. All collection vehicles shall have leak-proof bodies designed to prevent leakage, spillage and/or overflow and shall be designed so that collected materials are not visible.

3. All vehicles shall comply with California Environmental Protection Agency (Cal/EPA) noise emission regulations and California Air Resources Board air quality regulations and other applicable pollution control regulations.
- C. **Vehicle identification.** Vehicles shall be clearly labeled to provide easy identification of company.
- D. **Cleaning and Maintenance.**
1. **General.** The **Contractor** shall maintain all of its properties, vehicles, facilities, and equipment used in providing service under this agreement in a safe and operable condition at all times.
 2. **Cleaning.** Vehicles used in the collection of solid waste or recyclable materials shall be thoroughly washed, and thoroughly steam cleaned periodically so as to present a clean and visually appealing appearance. The **City** may inspect vehicles at any time to determine compliance with this agreement. The **Contractor** shall also make vehicles available to the **City's** staff for inspection, at any frequency it requests.
 3. **Painting.** The **Contractor** shall maintain the paint on its vehicles so that they are free of excessive fading and degradation and shall keep the paint on vehicles to appear neat and visually appealing.
 4. **Maintenance.** The **Contractor** shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly shall be removed from service until repaired and operating properly. The **Contractor** shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule or in accordance with California Highway Patrol standards, whichever are more stringent. The **Contractor** shall keep accurate records of all vehicle maintenance, recorded according to date and mileage and shall make such records available to the **City** upon request.
 5. **Repair.** The **Contractor** shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown, hydraulic oil or engine oil leaks, or any other cause so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, the **Contractor** shall obtain warranty performance. The **Contractor** shall maintain accurate records of repair, which shall include the date and mileage, nature of the repair, and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- E. **Operation.**
1. **General.** Vehicles shall be operated in compliance with Federal, State and local laws and regulations including the California Vehicle Code, the

regulations of the California Air Resources Board (CARB) Waste Collection Vehicle Regulations as established in the *California Code of Regulations Title 3 Section 2700 et seq.* and all applicable safety and local ordinances. Upon request of the **City**, the **Contractor** shall provide the **City** with documentation of such compliance for each vehicle. For example, with regard to CARB regulations, such documentation shall demonstrate, at a minimum, the vehicle number, make, model, year, control technology used or planned, and the year that the control technology was applied or is planned to be applied.

2. **Vehicle Weights.** The **Contractor** shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by Federal, State, or local weight restrictions on vehicles or roads. The **Contractor** shall implement policies and procedures to track the weight of vehicles to assure that they comply with this requirement.

In the event that a vehicle is overweight, the **Contractor** shall take all appropriate corrective actions to correct the cause of the overweight vehicle, including making adjustments to routes to eliminate ongoing over-weights associated with individual routes.

3. **Noise.** The **Contractor's** equipment used for solid waste and/or recyclable materials services shall be registered with the California Department of Motor Vehicles. Equipment shall comply with US EPA noise emission regulations, currently codified at *40 CFR Part 205*.
4. **Vehicle Tare Weights.** Annually, the **Contractor** shall have each collection vehicle weighed to determine the unloaded weight ("tare weight") of the vehicle. Upon a major repair that could affect the collection vehicle tare weight, the **Contractor** shall have the collection vehicle reweighed to establish a new tare weight.
5. **Vehicle Backing.** The **Contractor** shall use all reasonable means to minimize backing of collection vehicles when safe.

9.3 CONTAINERS

- A. **General.** The **Contractor** shall provide all carts and bins, as appropriate, to all customers as part of its obligations under this agreement. The **Contractor**-provided containers shall be designed and constructed to be watertight and prevent the leakage of liquids. All carts shall be manufactured by injection or rotational molding methods; and contain post-consumer content. Carts provided to customers shall be maintained by the **Contractor** in a safe condition. All containers shall meet applicable Federal, State, and local regulations for bin safety; shall be covered with attached lids; and shall have the capability to be locked if required or requested by the customer. All containers shall be maintained in a safe, serviceable, and functional condition.

- B. **Color.** The colors of the containers provided to single-family, multi-family, and commercial customers shall be a uniform color for solid waste and a contrasting uniform color for recyclable materials and for green waste/organics, or if same color, as labeled.
- C. **Repair and replacement.** The **Contractor** shall maintain all bins to appear visually appealing and shall paint the bins and boxes, as needed, to maintain this appearance. The **Contractor** shall repair or replace all containers damaged by collection operations (e.g., vehicle apparatus interface) within five (5) Business Days of being notified by customer or observing the damaged container. If the repair or replacement cannot be completed within five (5) Business Days, the **Contractor** shall notify customer and provide a **Contractor**-owned container of the same size or larger until the original container can be replaced. The cost to repair or replace containers damaged or destroyed by the **Contractor** or made unserviceable through normal wear and tear (except customer-owned containers) shall be borne by the **Contractor**. The **Contractor** shall not be responsible for the cost of repairing or replacing the **Contractor**-owned containers that are lost, damaged, or destroyed through customer's negligence. In such case, the **Contractor** shall be entitled to bill customers for the cost of a replacement **Contractor**-owned container and its delivery as presented in the rate schedule shown as Attachment A, as amended from time to time.
- D. **Protection from Wildlife.** The Customer shall take all reasonable precautions to protect container from damage or intrusion by wildlife, i.e. scavenging birds and bears. Containers shall not be set out in such a fashion (e.g. missing covers or open covers) or any earlier than the night before collection so as to limit scavenging by wildlife. If damage to containers occurs due to customer gross negligence in this respect, the **Contractor** shall have the discretion to bill customers for the cost of a replacement container and its delivery as presented in the rate schedule shown as Attachment A. The **Contractor** shall make bear-resistant containers, locking mechanisms, or other appropriate means available to customers in accordance the rate schedule shown as Attachment A.

9.4 PERSONNEL

- A. **General.** The **Contractor** shall furnish such qualified drivers, mechanical, supervisory, customer service, clerical, and other personnel as may be necessary to provide the services required by this agreement in a safe, thorough, professional and efficient manner and shall provide, at a minimum, the number and type of personnel necessary for same.
- B. **Driver qualifications.** All drivers shall be trained and qualified in the operation of collection vehicles, and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. The **Contractor** shall use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

- C. **Customer service representative training.** *The Customer service representatives shall be trained on specific City service requirements and Contractor policies. A City information sheet shall be provided to each customer service representative for easy reference of City requirements and general customer needs.*
- D. **Safety training.** *The Contractor shall provide suitable operational and safety training for all of its employees who operate collection vehicles or equipment or who are otherwise directly involved in such collection. The Contractor shall train its employees involved in collection to identify, and not to collect, hazardous waste or infectious waste.*
- E. **Drug Free Workplace.** *The Contractor shall adopt policies and procedures consistent with State and Federal law that ensure a sober and drug-free workplace. Further, the policies and procedures shall prohibit an employee from operating equipment and vehicles (whether on or off duty) while under the influence of alcohol or drugs. The purpose of these policies and procedures is to ensure workplace safety, productivity, efficiency, and the quality of the Contractor's service to customers. The Contractor shall participate in all routine and/or required random drug and alcohol testing programs.*

9.5 HAZARDOUS WASTE INSPECTION AND HANDLING

- A. **Inspection program and training.** *The Contractor shall visually check solid waste containers, recyclable materials and other materials put out for collection and may reject solid waste, recyclable materials, and other materials observed to be contaminated with hazardous waste and not collect hazardous waste put out with solid waste, and recyclable materials. The Contractor shall develop a load inspection program that includes the following components:*
 - 1. Personnel and training
 - 2. Load checking activities
 - 3. Management of wastes
 - 4. Record keeping and emergency procedures

The Contractor's load checking personnel, including its collection vehicle drivers, shall be trained in:

- 5. The effects of hazardous substances on human health and the environment
- 6. Identification of prohibited materials
- 7. Emergency notification and response procedures. Collection vehicle drivers shall visually check containers before collection when practical.

- B. *Response to Hazardous Waste identified during Collection.*** Under no circumstances shall the **Contractor's** employees knowingly collect hazardous waste or remove unsafe or poorly containerized hazardous waste from a collection container. If the **Contractor** determines that material placed in any container for collection is hazardous waste or other material that may not legally be accepted or safely processed at the designated transfer facility or presents a hazard to the **Contractor's** employees, or those at the designated transfer facility, the **Contractor** shall have the right to refuse to accept such material. If hazardous waste is found in a collection container or collection area that could possibly result in imminent danger to people or property, the **Contractor** shall immediately telephone the nine-one-one (911) emergency telephone number. The **Contractor** shall notify the **City** of any hazardous waste identified in containers or left at any premises within twenty-four (24) hours of identification of such material.
- C. *Reporting, regulations, and record keeping.*** The **Contractor** shall comply with emergency notification procedures required by applicable laws and regulatory requirements. The **Contractor** shall notify all appropriate agencies, including the California Department of Toxic Substances Control, local emergency response providers and the National Response Center of reportable quantities of hazardous waste found or observed in solid waste, recyclable materials, electronic waste, and, universal waste, anywhere within its service area. In addition to other required notifications, if the **Contractor** observes any substances which it or its employees reasonably believe or suspect to contain hazardous wastes unlawfully disposed of or released on any **City** property, including storm drains, streets or other public rights of way, the **Contractor** will immediately notify the **City**. All records required by regulations shall be maintained at the **Contractor's** facility. These records shall include: waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records. The **Contractor** shall maintain records showing the types and quantities, if any, of hazardous waste found in solid waste, and/or recyclable materials which were inadvertently collected from customers within its service area, but diverted from landfilling.

9.6 COMMUNICATION AND COOPERATION WITH CITY

Communications. The **Contractor's** Representative shall have e-mail capabilities to enable the **City** and the **Contractor's** Representative to communicate via email. The **Contractor's** Representative shall respond to the **City** email correspondence within twenty-four (24) hours.

- A. *Meetings.*** Upon request from Manager, the **Contractor** shall meet with the **City** to discuss operations issues of each active diversion program, quality and reliability of collection services, and compliance with the terms of the agreement.
- B. *Inspection by City.*** The **City** shall have the right, but not the obligation, to observe and inspect all of the **Contractor's** operations under this agreement. In connection therewith, the **City** shall have the right to enter facilities used by the **Contractor** during operating hours, speak to any of the **Contractor's** employees and receive cooperation from such employees in response to inquiries. In addition, upon

reasonable notice and without interference with the **Contractor's** operations, the **City** may review and copy any of the **Contractor's** operational and business records related to this agreement. If the **City** so requests, the **Contractor** shall make specified personnel available to accompany the **City** employees on inspections and shall provide electronic copies of records stored in electronic media.

9.7 BUY-RECYCLED POLICY

The **Contractor** shall use its best efforts to comply with the purchasing requirements described in this Section.

- A. **Supplies.** *The Contractor* shall use reasonable business effort to purchase office supplies and all paper products with 100% post-consumer recycled content or as high a percentage of post-consumer content that is reasonably available.
- B. **Recycled paper.** Insofar as is possible, the **Contractor** shall use recycled paper for all correspondence with customers and the **City**, including invoices, bills, reports, and public education materials.
- C. **Re-refined motor oil.** *The Contractor* shall be encouraged but not required to use re-refined motor oil for its collection vehicles.
- D. **Recycled plastic.** The **Contractor** shall purchase carts that contain the maximum post-consumer content available. All carts shall be 100% recyclable.

ARTICLE 10 RECORD KEEPING AND REPORTING

10.1 GENERAL

- A. **Need for Records.**
 - 1. The **Contractor** shall compile and maintain operational and financial records related to its performance as necessary to develop the reports required by this agreement, to conduct its operations, to support requests it may make to the **City** for rate adjustments, to support requests it may make to the **City** for any major changes to operations or anticipated future changes to operations, to support the need for anticipated major expenses likely to be incurred in the future, to help meet the reporting and solid waste program management needs of the **City** and to respond to requests from the **City**.
 - 2. Comprehensive Environmental Response, Compensation and Liability Act of 1982 (CERCLA) defense records. The **City** views the ability to defend against CERCLA 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** area was taken for transfer or disposal, to be matters of concern. The **Contractor** shall maintain data retention and preservation systems

which can establish where solid waste collected in the service area was delivered for transfer or disposal.

3. Upon written direction or approval of the **City**, the records and reports required by the **Contractor** in accordance with this and other articles of the agreement shall be adjusted in number, format, or frequency.

B. *Inspection of records.* *The City shall have the right to inspect or review at the Contractor's office, and with a minimum notice of 24 hours beforehand, the payroll tax reports, specific documents or records required expressly or by inference pursuant to this agreement, or any other similar records or reports of the Contractor that the City shall deem reasonably necessary to evaluate annual reports, rate adjustment applications provided for in this agreement, and the Contractor's performance or other matters related to this agreement. The City, its auditors and other agents selected by the City, shall have the right, during regular business hours, to conduct on-site inspections and review of the records and accounting systems of the Contractor and to make copies of any of the Contractor's documents relevant to this agreement, with the exception that the City or its representatives may not make copies of the Contractor's proprietary information. Upon request, the Contractor shall arrange for records of Related Party Entities to be made available to the City and its official representatives for review, to the extent such records are reasonably necessary to evaluate annual reports, the Contractor's performance, or other matters related to this agreement; provided, however, that no copies of Related Parties Entities' records may be made by the City or its representatives.*

C. *Retention of records.* *Unless otherwise herein required, the Contractor shall retain all records and data required to be maintained by this agreement for the Term plus at least three (3) years after expiration or early termination of the agreement. Records and data shall be in a chronological and organized form and readily and easily interpreted.*

D. *Record security.* *The Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as fire, theft, and earthquakes. Electronically-maintained data and/or records shall be protected, backed up, and stored at a separate site from the original data.*

10.2 RECORD KEEPING.

A. *Accounting Records.* *The Contractor shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, and provisions of all Collection Services provided under this Agreement, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit and inspection. Gross Revenues derived from provision of the Collection Services shall be recorded in the accounts of the Contractor. These records shall be separate from other records maintained by the Contractor for the*

provision of other services outside the scope of this Agreement as may be provided by the **Contractor**.

- B. City Payments to Contractor.** The **City** shall maintain records of all fee deductions from the revenue collected from customers, and any other payments made to the **Contractor**.
- C. Tonnage Records.** The **Contractor** shall maintain records of the quantities of (i) Garbage, Recyclable Material, and Green Waste, Organic Waste materials collected, processed, composted, and disposed under the terms of this Agreement, and (ii) Recyclable Materials and Organic Waste, by material type, purchased, sold, donated or given for no compensation, and residue disposed.
- D. Records.** The **Contractor** shall maintain all other records reasonably related to provision of Collection Services, whether or not specified in this Article or elsewhere in the Agreement.

10.3 REPORTING REQUIREMENTS. Annual reports shall be submitted to the City Representative no later than ninety (90) calendar days after the end of the reporting year. Reports shall be submitted in a format mutually agreed upon between the City and the Contractor.

10.4 ANNUAL REPORT. The annual report prepared by the City and the Contractor shall include:

- A. Experience Modification Factor** - provide a copy of the **Contractor's** annual experience modification factor and all historical factors.
- B. Account Data.** The number of SFD, MFD, and commercial accounts by service level (e.g., cart size, container size and collection frequency).
- C. Equipment Inventory.** Updated complete inventory of collection and major processing equipment including stationary, rolling stock and collection containers by type and size, and fulfilling all requirements of Section 5.1.
- D. Donated Services.** A listing of any services beyond the scope of this Agreement that were donated to the **City** or Service Recipients
- E. Tonnage Data.** The **Contractor** shall provide a quarterly individual accounting of solid waste, recyclable material, green waste, and other tonnages, separately for residential and commercial services, within each of the three areas. All tonnage data should be compared to the corresponding tonnage data from the prior year comparable period.
- F. Public Education and Information Activities.** The **Contractor** shall report on all public education and information activities undertaken during the period, including distribution of bill inserts, collection notification tags, community information and events, school visits, tours and other activities related to the provision of Collection Services. – The **Contractor** shall also provide an accounting of the status of the

implementation of the **Contractor's** Public Education Plan for the current year, including the date of completion of proposed activities.

G. AB 341 and 1826 Compliance Data. **Contractor** shall provide any AB 341, AB 1826 and SB 1383 reporting that the **City** may require.

H. Operational Problems and Actions Taken. Indicate instances of property damage or injury (other than property damage or injury to The **Contractor's** property or personnel), significant changes and/or challenges in operations, and market factors. This section of the report shall also include an accounting of the following:

1. **Fluid spills** - Date, location, truck number, estimated volume of spill and any other relevant information.
2. **Overweight vehicles** - Date, truck number, line of business (residential, commercial, roll-off), and the number of pounds overweight.

10.4.1 MONTHLY REPORT. The monthly report submitted to the **Contractor** shall include:

A. Gross Revenues and Fees.

1. A summary of the prior months Gross Revenues broken down by SFD, MFD Commercial Service Units and extra charges.
2. A summary of the prior calendar year's fees withheld by the city and corresponding remittance to the company.

10.5 REPORT FORMAT AND CONTENT AND ADDITIONAL REPORTING. The Contractor shall furnish The City with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period, including but not limited to any required AB 341, AB 1826, and SB 1383 reporting. In addition, the Contractor shall furnish to the City information regarding the Contractor's activities under this Agreement that is needed for the City to prepare its reports to CalRecycle. The City reserves the right to change the format and / or content of the Annual Reports, and any other required reports.

ARTICLE 11 THE RATES

11.1 GENERAL

The setting of and adjustment to the rates provided for in this Article shall be the full, entire, and complete compensation due to the **Contractor** for all labor, equipment, materials, and supplies, taxes, insurance, bonds, overhead, disposal, profit, and all other things necessary to perform all the services required by this agreement on the last day of each month. The **Contractor** will look to The **City** for payment of fees from billings collected by the **City** under this agreement. The **Contractor** will perform the responsibilities and duties described in this agreement in consideration of the right to charge and collect from the **City** amounts which have been paid by

customers for services rendered at rates fixed by the **City** from time to time. Nothing in this Article is intended to imply that any action of the **City** or the **Contractor** with regard to adoption, adjustment, imposition or collection of rates is violative of any laws, regulations or provisions of the *California Constitution*.

11.2 POTENTIAL RATE CONSTRAINTS

- A. The Parties recognize that, as of the date this agreement is entered into, there is no authoritative judicial determination of whether Articles XIII C and D (Proposition 218) of the *California Constitution* apply to charges imposed by private enterprises for solid waste handling and recycling services when those charges are regulated by a local government. Until such authoritative judicial guidance is available, the **City** intends to provide notice of proposed rate increases, and an opportunity for public hearing and protest as required by Article XIII D, except as specifically exempted under Article XIII D. The **City** will not be in default of this agreement if:
1. A successful majority protest under the provisions of Proposition 218 process prevents a proposed rate increase from being adopted, or
 2. A court of competent jurisdiction rules that rates adopted by **City** are not consistent with Article XIII D.
- B. The Parties further recognize that various rates and fees may be subject to the provisions of Article XIII A of the California Constitution (Proposition 13) and its implementing legislature. The timeframe for any action concerning the adjustment of the rates by either Party shall be adjusted as necessary to comply with such requirements as further provided below in Section 12.9.

11.3 GENERAL

The setting of and adjustment to the rates provided for in this Article shall be the full, entire, and complete compensation due to the **Contractor** for all labor, equipment, materials, and supplies, taxes, insurance, bonds, overhead, disposal, profit, and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. The **Contractor** will perform the responsibilities and duties described in this Agreement in consideration of the right to charge customers for services rendered at rates fixed by the **City** from time to time. The **City** shall collect for services rendered at the fixed rates and assess collection from time to time. Nothing in this Article is intended to imply that any action of the **City** or the **Contractor** with regard to adoption, adjustment, imposition or collection of rates is violative of any laws, regulations or provisions of the California Constitution.

11.4 INITIAL RATES

The rates that are in place as of the Effective Date of this Agreement through December 31, 2029. The initial rates that will be used as the rates for year one beginning September 1, 2021 as indicated in the last Solid Waste Extension. The initial rates are shown in the rate schedule shown as Attachment A, as determined by the Dunsmuir City Council Resolution 2021-18. Subsequent rate adjustments shall also be established by resolution of the Dunsmuir City Council, and shall

appear as the rate schedule shown in Attachment A, as amended from time to time, replacing the prior rates.

11.5 CITY OR CONTRACTOR REQUESTED COST PLUS DETAILED RATE REVIEW

For Fiscal year beginning January 1, 2023, a detail rate review will be performed to establish a base rate year. Subsequent, notwithstanding the rate adjustment procedures described above, the **City** or the **Contractor** may request a Cost Plus Detailed Rate review to be conducted following the procedures as set forth in Attachment B to this Agreement. A Cost Plus Detailed Rate review shall be conducted once every three (3) Calendar Years.

11.6 REFUSE RATE INDEX - ADJUSTMENTS TO THE RATES

- A. Adjustments to the Rates Using the Refuse Rate Index (RRI). Beginning on January 1, 2024 and annually thereafter, the **Contractor** shall, subject to compliance with all provisions of this Article and the provisions of all pertinent legal requirements including, but not limited to Proposition 218, receive an annual adjustment in of the rates through the Refuse Rate Index process as set forth in Attachment C of this Agreement. Beginning on January 1, 2024, and annually thereafter during the Term of this Agreement, the rates then in effect shall be adjusted by the RRI adjustment set forth below. In any year that the calculation of the RRI results in a negative number, there shall be no adjustment in the rates.

12-Month Annual Average. The RRI adjustment shall be the sum of the weighted percentage change in the 12-month annual average of each RRI index number between the base year, which shall be the prior preceding Calendar Year ending December 31st and the preceding Calendar Year ending December 31st as contained in the most recent release of the source documents listed in Attachment C, (“Refuse Rate Index”) which is attached to and Included in this Agreement. Therefore, the first rate adjustment under this Section will be based on the percentage changes between the 12-month annual average of the RRI indices for the company Fiscal Year 2023 and the annual average of the RRI indices for the Fiscal Year ending 2022. The RRI shall be calculated using the RRI methodology Included in Attachment C.

RRI Financial Information. On or before October 1, 2023, and annually thereafter during the Term of this Agreement, the **Contractor** shall deliver to the **City** prepared financial information in conjunction with the RRI submission.

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

As of November 15, 2023, and annually thereafter during the Term of this Agreement, the **City** shall notify the **Contractor** of the RRI adjustment to the affected rates to take place on January 1st of that year. The administrator reserves the right to change the notification and implementation

dates of the RRI adjustment if necessary, due to unforeseen delays in completing the rate adjustment process.

11.7 CITY OR CONTRACTOR REQUESTED SPECIAL RATE REVIEW

Notwithstanding above, either the **Contractor** or the **City** may request a special rate review to be conducted following the procedures as set forth in Attachment D to this Agreement, if costs of providing service hereunder result in an increase or decrease to the operating ratio by two percent (2%) or more for the then-current Rate Year.

A. *Eligible items.*

1. Flood, fire, earthquake, or other similar catastrophic event affecting the **City** which is beyond the control of and not the fault of **Contractor**, and that requires the provision of emergency services by the **Contractor**.
2. Change in applicable law or regulation occurring after the Effective Date.
3. Unforeseen changes in disposal or tipping fees, including the addition of, or change to a designated disposal site.
4. Migration of customers from services for which the **Contractor** charges hereunder to services for which the **Contractor** does not charge, or charges less, hereunder.
5. Changes in any allowable Pass-Through Costs as defined in Attachment A to this Agreement.
6. Unforeseen hyperinflation of certain costs, including but not limited to insurance and/or fuel, outside the control of the **Contractor**, that exceed 5% or more in any annual period.

11.8 RATE-SETTING PROCESS

The **City** shall be solely responsible for establishing and adjusting rates as described in this Article. Rates shall be adjusted only after joint discussions and agreement between the **City** and the **Contractor**, completion of the rate adjustment process described in Article 1, a review by the administrator and approval of the Council.

Annual review process. The rates shall be reviewed annually by the **City**, commencing with Rate Year one (2023) and continuing through the remaining Term.

11.9 ARTICLE XIII C - D (PROPOSITION 218)

The Parties recognize that, as of the date this agreement is entered into, there is no authoritative judicial determination of whether Articles XIIC and XIID (Proposition 218) of the California Constitution apply to charges imposed by private enterprises for solid waste handling and recycling services when those charges are regulated by a local government. Until such authoritative judicial

guidance is available, the **City** intends to provide notice of proposed rate increases, and an opportunity for public hearing and protest as required by Article XIID, except as specifically exempted under Article XIID:

- A. ***Proposition 218 Compliance.*** *The **City** shall be responsible for complying with all requirements of XIID of the California Constitution and all requirements of Government Code Section 53750 et seq. (collectively, “Proposition 218”), to the extent compliance with Proposition 218 is required. The **Contractor** shall cooperate with the **City** in providing the records and documentation, including customer and mailing lists, necessary to provide all notices and information required to conduct majority protest proceedings under Proposition 218. In conducting such proceedings, the **City** shall consult with the **Contractor**, as necessary, and shall keep the **Contractor** reasonably informed of the progress concerning each protest hearing the **City** conducts. However, the **City** shall at all times act independently of the **Contractor** in administering majority protest proceedings and shall at all times exercise its own judgment in ascertaining and applying the requirements of Proposition 218.*

- B. ***Proposition 218 Indemnification.*** ***Contractor** shall indemnify the **City**, its officers, employees, agents and volunteers, (collectively, “Indemnitees”) from and against all claims, damages, injuries, losses, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest fines, charges, penalties and expenses (including attorneys’ and expert witness fees, expenditures for investigation, and administration) and costs or losses of any kind whatsoever paid, imposed upon, endured or suffered by or assessed against the **Contractor** or any of the Indemnitees resulting in any form from the **City** conducting of protest proceedings under Proposition 218 or in connection with the application of Proposition 218 to the imposition, payment or collection of rates and fees for services provided by the **Contractor** under the Agreement. All expenses for the action(s) or proceeding(s) shall be borne exclusively by the **City**. The **City** shall defend any such action(s) or proceeding(s) with counsel of its choosing. The **Contractor’s** obligation to indemnify the **City** shall not be affected should the **Contractor** be named as a party in any such action(s) or proceeding(s) along with the **City** or Indemnitees. Nor shall the **Contractor’s** indemnification obligation be affected should the **Contractor** seek to intervene, or intervene, in any action(s) or proceeding(s).*

- C. ***Reductions in Service Following Majority Protest.*** *Following a majority protest to any requested rate increase, the Parties shall promptly meet and confer to discuss the impact to the **Contractor** on its ability to provide further services under the Agreement. As part of their efforts to meet and confer, the Parties shall discuss modifications to the services the **Contractor** provides, or reductions in the levels of service it provides, that would allow the **Contractor** to continue to receive a reasonable profit under the Agreement. Should the Parties agree on modifications and/or reductions in service, they shall enter into a separate amendment to the Agreement to memorialize the agreed upon terms. In no event, however, shall any modification in service or reduction in the service level be authorized in violation*

of any minimum performance standard governing the collection of solid wastes and recycled materials, including but not limited to any provision of the Integrated Waste Management Act (“AB 939”), Titles 14 and 27 of the California Code of Regulations, and Chapter 6.04 of the Dunsmuir Municipal Code.

ARTICLE 12 INDEMNITY, INSURANCE

12.1 INDEMNIFICATION

To the furthest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8, if applicable), the **City** shall not be liable for, and the **Contractor** shall defend (with attorneys reasonably acceptable to the **City**) and indemnify the **City** and its officers, agents, employees, and volunteers (collectively “**City Parties**”), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics; liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorney’s fees and court costs (hereinafter collectively referred to as “**Claims**”), which arise out of or are in any way connected to the work covered by this agreement arising either directly or indirectly from any act, error, omission or negligence of the **Contractor** or its officers, employees, agents, contractors, licensees or servants, including, without limitation, **Claims** caused by the concurrent negligent act, error or omission, whether active or passive of the **City Parties**. The **Contractor** shall have no obligation, however, to defend or indemnify **City Parties** from a **Claim** if it is determined by a court of competent jurisdiction that such **Claim** was caused by the sole negligence or willful misconduct of the **City Parties**.

12.2 HAZARDOUS WASTE INDEMNIFICATION

The **Contractor** shall indemnify, defend and hold harmless the indemnitees against all claims, of any kind whatsoever paid, incurred or suffered by, or asserted against indemnitees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous wastes released, spilled or disposed of by the **Contractor** pursuant to this agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the *Comprehensive Environmental Response, Compensation and Liability Act*, (“**CERCLA**”), 42 U.S.C. Section 9607(e), and *California Health and Safety Code* Section 25364, to defend, protect, hold harmless and indemnify indemnitees from liability and shall survive the expiration or earlier termination of this agreement. Notwithstanding the foregoing, the **Contractor** is not required to indemnify the indemnitees against claims arising from the **Contractor’s** delivery of solid waste, refuse, and/or recyclable materials to a solid waste disposal facility, or their subsequent delivery to other processing locations or the ultimate disposal site, unless such claims are due to the **Contractor’s** negligence or willful misconduct. The **Contractor’s** obligations under this Section shall not apply with regard to hazardous wastes or other unacceptable materials placed in containers without the **Contractor’s** knowledge and written approval.

12.3 CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT INDEMNIFICATION

The **Contractor** agrees to indemnify and hold harmless the indemnitees against all fines and/or penalties imposed by CalRecycle based on the **Contractor's** failure to comply with laws, regulations or permits issued or enforced by CalRecycle or caused or contributed to by the **Contractor's** failure to perform obligations under this agreement. This indemnity obligation is subject to the limitations and conditions in *California Public Resource Code* Section 40059.1 but is enforceable to the maximum extent allowable by that Section. This indemnity shall survive the termination or earlier expiration of this agreement. The **Contractor** shall not be obligated to indemnify the **City** against CalRecycle fines/penalties resulting from the sole negligence or willful misconduct of the **City**.

12.4 INSURANCE

Insurance Requirements. Without limiting the **Contractor's** indemnification of the **City**, the **Contractor** shall procure and maintain at all times during the life of this Agreement, a program of insurance against claims for injuries to persons or damages to property which may arise from or in conjunction with performance of the services hereunder by the **Contractor**, its agents, or employees. Said coverage shall be with a company authorized to do business in the state of California, and possess at least an A.M. Best's rating of A:V and be acceptable to the **City**. The **Contractor** shall provide the **City** with proof of insurance coverage upon request.

A. Insurance shall meet the following provisions:

Minimum Limits on Insurance

1. General Liability: \$1 Million per occurrence for bodily injury, personal injury, and property damage arising out of services performed by the **Contractor** under this agreement.
2. Automobile Liability: \$1 Million per accident for bodily injury, death, and property damage insuring against liability arising out of the use of any vehicle in performing services under this agreement.
3. Workers' Compensation insurance as required by the State of California.

B. Other Insurance Provisions – Commercial General and Automotive Liability

The commercial general liability and automotive liability policies are to contain, or be endorsed to contain, the following provisions:

1. The **City**, its elected and appointed officials, officers, agents and employees are to be covered as additional insured with respect to liability arising out of operations performed by or on behalf of the **Contractor**; or automobiles owned, leased, hired or borrowed by the **Contractor**.

2. For any claims related to the **Contractor's** services rendered pursuant to this Agreement, the **Contractor's** insurance coverage shall be primary insurance as respects the **City**, its elected and appointed officials, officers, agents and employees. Any insurance or self-insurance maintained by the **City**, its elected and appointed officials, officers, agents and employees shall be excess of the **Contractor's** insurance and shall not contribute with it.
3. Each insurance policy required by the clause shall be endorsed to state that coverage shall not be reduced or canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the **City's** Risk Manager.

ARTICLE 13 DEFAULT AND REMEDIES

13.1 EVENTS OF DEFAULT.

Each of the following shall constitute an event of default ("**Contractor** default"):

- A. The **Contractor** fails to perform its obligations under Articles 5 through 8 of this agreement and its failure to perform is not cured within thirty (30) Business Days after written notice from the **City** specifically describing such failure.
- B. The **Contractor** fails to perform its obligations under any other Article of this agreement and its failure to perform is not cured within thirty (30) Business Days after written notice from the **City** specifically describing such failure, provided that if the nature of the failure is such that it will reasonably require more than thirty (30) Business Days to cure, the **Contractor** shall not be in default so long as it promptly commences the cure and diligently proceeds to completion of the cure, and provided further that neither notice nor opportunity to cure applies to events described in the following subsections C through G.
- C. The **Contractor** ceases to provide collection and transportation services for a period of seven (7) Business Days for any reason within the **Contractor's** control. For purposes of clarity, a *Force Majeure* event is not within the **Contractor's** control.
- D. The **Contractor** files a voluntary petition for relief under any bankruptcy, insolvency or similar law.
- E. An involuntary petition is brought against the **Contractor** under any bankruptcy, insolvency or similar law which remains un-dismissed or un-stayed for ninety (90) Days.
- F. The **Contractor** fails to maintain all required insurance coverage as required by the Agreement, and the **Contractor** fails to cure such failure within five (5) Business Days after receiving notice from the **City**.

- G. A representation or warranty contained in Article 2 proves to be false or misleading in a material respect as of the date such representation or warranty was made, and the **Contractor** fails to cure such misrepresentation within five (5) Business Days after receiving notice from the **City**.

13.2 CONTRACTOR'S RIGHT TO HEARING

No default shall be deemed unexcused unless the Manager reasonably so determines after giving **Contractor** the right to be heard and to present exculpatory evidence. The **Contractor** may also ask for a hearing before the City Council, which request shall not be unreasonably denied. The **Contractor** shall have the right to appeal any decision of the City Council to the Superior Court of California.

13.3 RIGHT TO TERMINATE UPON DEFAULT.

- A. Upon any **Contractor** default, and subject to the **Contractor's** cure rights set forth above, the **City** may terminate this agreement or suspend it, in whole or in part. Such suspension or termination shall be effective thirty (30) days after the **City** has given notice of suspension or termination to the **Contractor**, except that such notice may be effective in a shorter period of time, or immediately, if the **Contractor** default is one which endangers the health, welfare or safety of the public, such as the failure to collect solid waste, C&D and/or recyclable materials for the period of time exceeding seven (7) days. Notice shall be given in writing and shall specifically describe the grounds for termination or suspension. The **Contractor** shall continue to perform the portions of the agreement, if any, that are not suspended in full conformity with its terms.
- B. In the event of termination of this agreement, each Party shall be entitled to payment of amounts due to them through the date of termination, but shall otherwise have no further obligation to one another pursuant to this agreement after the date of termination.

13.4 SPECIFIC PERFORMANCE

By virtue of the nature of this agreement, the urgency of timely, continuous and high quality service, the lead time required to effect alternative service, and the rights granted by the **City** to **Contractor**, the remedy of damages for a breach hereof by the **Contractor** is inadequate and the **City** shall be entitled to injunctive relief.

13.5 RIGHT TO PERFORM; USE OF CONTRACTOR PROPERTY

- A. If this agreement is suspended and/or terminated due to a **Contractor** default, or, for any reason whatsoever, the **Contractor** fails, refuses or is unable to collect, transport or dispose of any or all solid waste, recyclables, C&D or other discarded materials which are required by this agreement, at the time and in the manner provided in this agreement for a period of more than five (5) days, and if, as a result thereof, solid waste, recyclables, C&D or other discarded materials should accumulate in the **City** to such an extent and in such a manner, or for such a time

that the **City** should find that such an accumulation endangers or menaces the public health, safety or welfare, the **City** shall have the right, even if the **Contractor** is not in breach of this agreement, to perform, with its own forces or by contract, or to assign to another contractor within the **City** the work herein or such part thereof as it may deem necessary upon twenty-four (24) hours prior written notice to the **Contractor**.

- B.** The **City** shall provide the **Contractor** written notice that it intends to consider invoking this Article at a public meeting of its governing body, to be held two (2) or more Business Days from the date of the notice. At the meeting, the governing body may invoke its rights under this Article if it determines that there has been an interruption in collection service and that such interruption may continue, thereby threatening the public health, safety and welfare. If the governing body makes that determination, it may also determine to exercise the **City's** right to perform collection and transport services with its own personnel or authorize a third Party to do so, after having invoked this right under its agreement with the **Contractor**.
- C.** Such failure to act by the **Contractor** shall be deemed by the **City** as a public health emergency, and shall empower the **City**, per Article 13 of this agreement, to perform, or cause to be performed, such services itself with its own or other personnel and its own or other equipment, including, but not limited to the **Contractor's** equipment.. In such an event, the **Contractor** shall immediately make the **Contractor's** collection equipment and a listing and description, including street names and addresses of all of the **Contractor's** service collection routes within the **Contractor's** service area available to the **City**. The **City** shall have the right to continue to perform such services until other suitable arrangements can be made for the provision of such services, which may include the award of a contract to another service provider.
- D.** The period of time that the **City** shall have the right to use the **Contractor's** equipment for the collection, transport or disposal of solid waste, recyclables, C&D or other discarded materials in such an event shall not exceed ninety (90) days. The **Contractor** shall be reimbursed for the use of such equipment at the **Contractor's** actual cost for such equipment for the period of time that such use occurs.

13.6 CITY DEFAULT

The **City** shall be in default under this agreement ("**City** default") in the event the **City** commits a material breach of the agreement and fails to cure such breach within thirty (30) days after receiving notice from the **Contractor** specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, the **City** shall not be in default so long as the **City** promptly commences the cure and diligently proceeds to completion of the cure. In the event of an asserted the **City** default, the **Contractor** shall continue to perform all of its obligations hereunder until a court of competent jurisdiction has issued a final judgment declaring that the **City** is in default.

13.7 EXCUSE FROM PERFORMANCE

- A. **Force Majeure.** Provided that the requirements of this Section are met, the **Contractor** shall be excused from performance and shall not be liable for failure to perform under this agreement if the **Contractor's** performance is prevented or delayed by a *Force Majeure* event. If, as a result of a *Force Majeure* event, the **Contractor** is unable to wholly or partially meet its obligations under this agreement, it shall give the **City** prompt written notice of the *Force Majeure* event, describing it in full detail, and describing the effect(s) of the *Force Majeure* event upon the **Contractor's** performance of its obligations. The **Contractor's** obligations, whether in full or in part, shall be suspended, but only with respect to that particular component affected by the *Force Majeure* and only for the period of time which the *force majeure* exists. The **Contractor** shall endeavor to fully restore its ability to perform its obligations under this agreement as quickly as possible.
- B. **City's rights in the event of Force Majeure.** The partial or complete interruption or discontinuance of the **Contractor's** services caused by an event of *Force Majeure* shall not constitute a **Contractor** default. Notwithstanding the foregoing:
1. The **City** shall have the right to make use of the **Contractor's** facilities and equipment in the event of non-performance for more than seven (7) Business Days excused by *Force Majeure*;
 2. If the **Contractor's** failure to perform by reason of *Force Majeure* continues for a period of one hundred and eighty (180) days or more, the **City** shall have the right to immediately terminate this agreement for convenience;

ARTICLE 14 OTHER AGREEMENTS OF THE PARTIES

14.1 RELATIONSHIP OF PARTIES

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

14.2 COMPLIANCE WITH LAW

In providing the services required under this Agreement, the **Contractor** shall at all times comply with all applicable laws of the United States, the State and the **City**, with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, and by the **City**, now in force and as they may be enacted, issued or amended during the Term, and with all permits affecting the services to be provided.

14.3 ASSIGNMENT

A. **Qualifications.** *The Contractor* acknowledges that this agreement involves rendering a vital service to the **City's** residents and businesses, and that the **City** has selected the **Contractor** to perform the services specified herein based on:

1. The **Contractor's** experience, skill and reputation for conducting its operations in a safe, effective and responsible fashion, and
2. The **Contractor's** and the Guarantor'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 the **Contractor** to perform the services to be rendered by the **Contractor** under this agreement.

B. **City consent required.** *The Contractor* shall not assign its rights or delegate or otherwise transfer its obligations under this agreement to any other person without the prior notification to the **City**, aside from the purchase of ancillary goods or services provided by third parties. Any such assignment made without notifying the **City** shall be void and the attempted assignment shall constitute a **Contractor** default. Assignment of this agreement to another corporate subsidiary or Affiliate of the **Contractor**, where there is no change in ownership or control shall not require the **City's** consent.

C. **Assignment defined.**

1. For the purpose of this Section, "assignment" shall include:
 - a. A sale, exchange or other transfer to a third Party of substantially all of the **Contractor's** assets dedicated to service under this agreement;
 - b. Any assignment by operation of law, including insolvency or bankruptcy, an assignment for the benefit of creditors, a writ of attachment for an execution being levied against this agreement, appointment of a receiver taking possession of the **Contractor's** property, or transfer occurring in the event of a probate proceeding; and

c. Any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change in control of the **Contractor**.

2. “Change in control of **Contractor**” for purposes of this Section shall mean a change in the ownership or control of more than fifty percent (50%) of the voting stock of the **Contractor** (excluding transfers to revocable trusts for estate-planning purposes).

3. An “assignment” shall not include a transaction(s) with an affiliate of the **Contractor**.

D. Consent requirements. If **Contractor** requests the **City’s** consideration of and consent to an assignment, the **City** shall not unreasonably deny such request. No request by the **Contractor** for consent to an assignment need be considered by the **City** unless and until the **Contractor** has met the following requirements:

1. The **Contractor** shall pay the **City** its reasonable expenses for attorneys’ fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;

2. The **Contractor** shall furnish the **City** with audited financial statements of the proposed assignee’s operations for the immediately preceding three (3) operating years;

3. **The Contractor** shall furnish the **City** with satisfactory proof:

a. That the proposed assignee has at least five (5) years of solid waste/recycling management experience on a scale equal to or exceeding the scale of operations conducted by the **Contractor** under this agreement.

b. That in the last five (5) years, the proposed assignee has not been the subject of any administrative or judicial proceedings initiated by a federal, State or local municipality having jurisdiction over its operations due to an alleged failure to comply with federal, State or local laws or, if such proceeding(s) have occurred, that such proceeding(s) have not materially impacted the assignee’s ability to perform its obligations under an agreement for services similar to this agreement.

c. That the proposed assignee conducts its operations in a safe and environmentally conscientious manner, 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 and all environmental laws.

- d. Of any other information required by the **City** to ensure the proposed assignee can fulfill the terms of this agreement in a timely, safe and effective manner.

E. *No obligation to consider.* The **City** will not be obligated to consider a proposed assignment if the **Contractor** is in default.

14.4 SUBCONTRACTING

Contractor shall not engage any subcontractors to perform any of the services required of it without the prior written consent of the **City**. The **Contractor** shall notify the **City** no later than twenty-four (24) hours prior for a short term Subcontract (7 days or less) or no later than thirty (30) days prior for a long term Subcontract (greater than 7 days). The **City** may approve or deny any such request at its sole discretion.

14.5 AFFILIATED ENTITY

If the **Contractor** enters into any financial transactions with an affiliate for the provision of labor, equipment, supplies, services, or capital related to the furnishing of service under this agreement, that relationship shall be disclosed to the **City**, and in the financial reports submitted to the **City**. In such event, the **City's** rights to inspect records and obtain financial data shall be limited to records and data of such affiliate that are relevant to those specific financial transactions.

14.6 NOTICE

- A. All notices, demands, requests, proposals, approvals, consents and other communications which this agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the Parties at the address below or be mailed as certified mail, return receipt requested, addressed as follows:

If to City:

City of Dunsmuir
5915 Dunsmuir Avenue
Dunsmuir, California 96025
Attn: Todd Juhasz , City Manager

If to Contractor:

Clemens Waste Hauling
PO Box 12
Dunsmuir, CA 96025
Attn: Diana Duran, Owner

All such notices, demands, requests, proposals, approvals, consents and other communications shall be effective when received if personally delivered or three (3) days after mailed as aforesaid. The **Contractor** shall promptly provide the **City** the name and contact information for the above employees if there is a change during the Term.

14.7 REPRESENTATIVES OF THE PARTIES.

- A. *Representatives of the City.* References within this agreement to the “**City**” shall mean the Dunsmuir City Council. All policy-related actions to be taken by the **City**

shall be taken by the City Council. The City Council may delegate authority to the Manager, and/or to other **City** officials regarding operational decisions and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. The **Contractor** may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

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

14.8 DUTY OF CONTRACTOR NOT TO DISCRIMINATE

In the performance of this agreement the **Contractor** shall not discriminate, nor permit any subcontractor to discriminate, against any employee, applicant for employment, or customer on account of race, color, national origin, ancestry, religion, sex, age, physical disability, medical condition, sexual orientation, marital status, or other characteristic, in violation of any applicable law.

14.9 TRANSITION TO NEXT SERVICE PROVIDER

At the expiration of the Term or the earlier proper termination of the agreement, or upon the **City's** approval of a proposed assignment, **Contractor** shall cooperate fully with the **City** to ensure an orderly transition to any and all new service providers. The **Contractor** shall provide, within ten (10) Business Days of a written request by the **City**, then-current route lists, which identify the routes, and any special collection notes. The **Contractor** may, but is not required to, sell collection vehicles and containers to the next service provider. The **Contractor** shall direct route supervisors to provide "ride-alongs" so that the new service provider's employees may ride with drivers at the new service provider's expense and liability in collection vehicles during collection operations. The **Contractor** will direct its drivers and other employees to provide accurate information to the new provider about routing and customers.

14.10 REPORTS AS PUBLIC RECORDS

Unless an exemption applies, the reports, records and other information submitted or required to be submitted by the **Contractor** to the **City** are public records within the meaning of that term in the *California Public Records Act, Government Code Section 6250 et seq.* Unless a particular record is exempted from disclosure by the *California Public Records Act*, it must be disclosed to the public by the **City** upon request. The **Contractor** will not object to the **City** making available to the public any information submitted by the **Contractor**, or required to be submitted in connection with the rates, including records described in Article 12. The **City** shall notify the **Contractor** of any and all such public records requests, and shall provide the **Contractor** with reasonable amount of time to seek a protective order to protect such records from disclosure in the

event the **Contractor** has reason to believe that the disclosure contains proprietary information or is otherwise exempt under the *California Public Records Act*.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 GOVERNING LAW

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

15.2 JURISDICTION

Any lawsuits between the Parties arising out of this agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this agreement is made in and will be performed in Siskiyou County.

15.3 BINDING ON SUCCESSORS

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

15.4 PARTIES IN INTEREST

Nothing in this agreement is intended to confer any rights on any persons other than the Parties to it and their permitted successors and assigns.

15.5 WAIVER

The waiver by either Party of any breach or violation of any provisions of this agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

15.6 ATTACHMENTS

Each of the attachments, identified as Attachments “A” through “J” is attached hereto and incorporated herein and made a part hereof by this reference.

15.7 ENTIRE AGREEMENT

This agreement, including the attachments, represents the full and entire agreement between the Parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

15.8 SECTION HEADINGS

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

15.9 INTERPRETATION

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

15.10 AMENDMENT

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

15.11 SEVERABILITY

If a court of competent jurisdiction holds any non-material provision of this agreement to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

15.12 COSTS AND ATTORNEYS' FEES

The prevailing Party in any action brought to enforce the terms of this agreement or arising out of this agreement may recover its reasonable costs expended in connection with such an action from the other Party, including its own attorneys' fees.

15.13 NO DAMAGES FOR INVALIDATION OF AGREEMENT

If a final judgment of a court of competent jurisdiction determines that this agreement is illegal or was unlawfully entered into by **City** due to circumstances beyond **City's** control, neither Party shall have any claim against the other for damages of any kind (Including loss of profits) on any theory.

15.14 REFERENCES TO LAWS

All references in this agreement to laws and regulations shall be understood to Include such laws and regulations as they may be subsequently amended or re-codified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to Include agencies that succeed to or assume the functions they are currently performing.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers/representatives thereunto duly authorized.

CLEMENS WASTE DISPOSAL, INC.

CITY OF DUNSMUIR

By: 

Diana Duran, Owner

Address:
PO Box 12
Dunsmuir, CA 96025

By: 

Todd Juhasz, City Manager

Address:
5915 Dunsmuir Ave.
Dunsmuir, CA 96025

Approved as to Form:


John S. Kenny, City Attorney

ATTACHMENT A
RATE SHEET

Exhibit A			
Expenses	Projected 21-22	Projected 22-23	Projected 23-24
Operating	\$49,262	\$50,740	\$52,692
Truck	\$39,000	\$40,170	\$41,375
Insurance	\$35,000	\$38,000	\$42,750
Payroll	\$45,016	\$46,142	\$47,295
Taxes	\$2,210	\$2,277	\$2,345
New Truck #1 Pmts	\$31,200	\$31,200	\$31,200
New Truck #2 Pmts		\$39,323	\$39,323
	-	-	-
SubTotal	\$201,688	\$247,852	\$256,980
Income	\$73,000	\$75,190	\$77,445
Total	\$274,688	\$323,042	\$334,425

monthly	monthly	monthly
\$22,890.67	\$26,920.17	\$27,868.75

	% to Clemens
Extra Garbage Stickers	45%
Extra Garbage Charges	45%
Dumpster Rental	100%

ATTACHMENT B COST PLUS DETAILED RATE METHODOLOGY

General

In the event that either **City** or **Contractor** requests a Cost Plus Detailed Rate Review, as provided for in Section 12.5 the Cost Plus Detailed Rate Review shall be based on evidence or data presented by **City** or **Contractor** contained within the compiled financial statements for the preceding complete Calendar Year for the required services.

Overview of Cost Plus Detailed Rate Application Process

The Cost Plus Detailed Rate Review process is as follows:

1. Identify the reason(s) for the Cost Plus Detailed Rate Review request;
2. Establish the actual financial results for the prior Calendar Year, which shall consist of all revenues and expenses as reported in **Contractor's** compiled financial statement. It is expected that any revenues and/or expenses attributed to services shall be clearly reported in the annual compiled financial statement along with the basis used to assign or allocate such revenues and expenses;
3. Calculate the rate adjustment required to achieve a revenue that will, in turn, result in a 87.5% (eighty seven and one half percent) targeted Operating Ratio.
4. Confer with the other Party to determine whether the requested rate modification is in conformance with the provisions of Section 12.5; and,
5. Jointly approve (which approval shall not be unreasonably withheld) and sign the Application and submit the Application to the City Council.

Cost Plus Detailed Rate Review Application

In support of a Cost Plus Detailed Rate Review, the **City** or the **Contractor** shall prepare a Cost Plus Detailed Rate Review Application (hereinafter "Application") that shall be submitted to the other Party no later than October 1st. The Application shall include:

1. The reason(s) for the Application;
2. Line item revenue and expenses for the services as reported in **Contractor's** annual audited financial statement;
3. Calculated revenue requirement based upon the current Operating Ratio;
4. Requested rate adjustment required to achieve a revenue that will, in turn, result in a 87.5% targeted Operating Ratio, and
5. Signed letter(s) from the **Contractor's** management stating that they have reviewed the Application and attest to the accuracy and completeness of the Application.

Operating Ratio

Operating Ratio for this Agreement shall be 87.5%.

Non-Allowable Expenses

- Fines
- Penalties and Violations
- Employee free services in excess of normal weekly garbage service and limited roll-off service (1 debris box/employee/year)
- Related Party charges in excess of that which would otherwise reasonably be charged by an unrelated party
- Costs that are not reasonable or necessarily incurred in the performance of the services provided in accordance with the Solid Waste Services Agreement
- Limitations on Allowable Expenses
- Reasonable related Marketing Expense, Promotional Expense, and Travel Expense are Allowable Expense

**ATTACHMENT C
REFUSE RATE INDEX**

The Refuse Rate Index (RRI) adjustment shall be calculated in the following manner:

1. The expenses for the required services for the designated fiscal period (August-July) shall be prepared in the format set forth in the “Operating Cost Statement” below.
2. The expenses for the required services shall be broken down into the following three (3) cost categories: Diesel Fuel; All Other, and Disposal. Each cost category is assigned a weighted percentage factor based on that cost category’s proportionate share of the total of the costs shown for all cost categories.
3. The following two (2) indices published by the Bureau of Labor Statistics (BLS), and the actual change in the Designated Disposal Site (Transfer Station) tipping fee, and actual Depreciation expense are used to calculate the adjustment for each cost category. The change in each index shall be based on the 12 month fiscal Year average for each index for the most recently completed fiscal Year as compared to the 12 month fiscal Year average for the immediately prior fiscal Year. The change in the Landfill tip fee shall be the fee as set on July 31st of the current year as compared to the fee established on July 31st of the prior year.
4. In the event any index is discontinued, a successor index shall be selected by **City**. Successor indices shall be those indices that are most closely equivalent to the discontinued indices as recommended by the BLS.

Cost Category	Index
Diesel Fuel	California No 2 Diesel Ultra Low Sulfur (0-15 pm) http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp
All Other	Series ID: CUURS49BSA0 All items in San Francisco-Oakland-Hayward, CA All Urban Consumers, not seasonally adjusted
Disposal	Set to the actual tip fee charged to Contractor by the Designated Disposal Site for the current year as compared to the prior year.

The percentage weight for each cost category is multiplied by the change in each appropriate index to calculate a weighted percentage for each cost category. The weighted percentage changes for each of the three (3) cost categories are then added together to calculate the RRI.

Operating Cost Statement – Description

Diesel Fuel: List all diesel fuel accounts.

All Other: List all other expense accounts related to the services provided under this Agreement. This category includes all insurance including labor, depreciation, general liability, fire, truck damage, and extended coverage; rent on property, truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance; non-diesel fuel; office supplies; postage; trade association dues and subscription; advertising; and miscellaneous other expenses.

Disposal: List all Disposal Costs related to the provision of collection services.

ATTACHMENT D
SPECIAL RATE REVIEW METHODOLOGY

General

In the event that either the **City** or the **Contractor** requests a Special Rate Review, as provided for in Section 12.7., the Special Rate Review shall be based on evidence or data presented by the **City** or the **Contractor** that a singular and/or unexpected occurrence has occurred within the past 12 months that has effected and will continue to have a significant¹ financial effect on the **Contractor's** revenues and/or expenses and that the **Contractor's** costs for the required services have undergone and will continue to undergo a significant increase or decrease due to this occurrence.

Overview of Special Rate Application Process City and/or Contractor shall:

1. 1. Identify the occurrence which has significantly affected the **Contractor's** revenues and/or expenses.
2. Review supporting evidence or data supporting the request for a rate modification.
3. Calculate a revenue requirement needed to achieve a 87.5% (eighty seven and one half percent) targeted Operating Ratio.
4. Calculate the rate adjustment required to achieve calculated revenue requirement that will, in turn, result in a eighty seven and one half percent (87.5%) targeted Operating Ratio.
5. Confer with the other Party to determine whether the requested rate modification is in conformance with the provisions of Section 12.7; and
6. Jointly approve (which approval shall not be unreasonably withheld) and sign the Application and submit the Application to the City Council.

Special Rate Review Application

In support of a Special Rate Review, the **City** and/or the **Contractor** shall prepare a Special Rate Review Application (hereinafter "Application") that shall be submitted to the other Party. The Application shall include:

1. The occurrence that has been identified as the cause for the Special Rate Review.
2. The financial impact of the identified occurrence.
3. The evidence or data supporting the request for a rate modification.
4. Calculated revenue requirement based upon the current targeted Operating Ratio;
5. Requested rate adjustment required to achieve calculated revenue requirement; and

6. Signed letters from the **City's** Administrator and the **Contractor's** management stating that they have reviewed the Application and that they attest to the accuracy and completeness of the Application.