



*City of*  
**Atwater**

**Request for Qualifications  
(RFQ) for  
Temporary Roll-off Services**

Proposal must be received  
no later than 3:00 P.M. PT  
May 30, 2023

**Questions with regards to submission, process, or proposal  
can be emailed to:**

Justin Vinson  
Public Works Director  
[jvinson@atwater.org](mailto:jvinson@atwater.org)

City of Atwater  
Publics Works Department  
470 Aviator Dr  
Atwater, CA 95301  
209-357-6370  
[www.atwater.org](http://www.atwater.org)

**Date of Issue:** May 22, 2023

**Deadline for Questions:** May 25, 2023 at 4:00 p.m. PT

**Proposal Submission Deadline:** May 30, 2023 by 3:00 p.m. PT

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**Attachment A – Draft Franchise Agreement**

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## Notice

### Request for Qualifications For Temporary Roll-Off Services

NOTICE IS HEREBY GIVEN that the City of Atwater is seeking proposals from qualified Contractors for Temporary Roll-Off Services .

Submit two (2) hard copies in a sealed package clearly marked "Proposal for Temporary Roll-off Services ". Submittals must be received no later than 3:00 p.m. PT, Tuesday, May 30, 2023, and addressed as follows:

City of Atwater  
Attention: Janell Martin  
The City of Atwater City Clerk  
1160 Fifth Street  
Atwater, CA 95301

No late submittals will be accepted. The City may conduct interviews of top ranking Contractors in order to make a final selection. The successful firm will be recommended to the City Council for authorization to enter into a Temporary Roll-Off Collection Service Agreement and Franchise for Temporary Roll-off Services with the City of Atwater. Any questions regarding submissions, process, or proposals can be emailed to Justin Vinson, Public Works Director at [jvinson@atwater.org](mailto:jvinson@atwater.org). The Request for Proposal can be viewed and/or obtained from the City of Atwater website at <https://www.atwater.org/bids-rfps-rfqs/>.

Failure to comply with the requirements set forth in this Request for Proposal may result in disqualification. Proposals and/or modifications received subsequent to the hour and date specified above will not be considered. Submitted proposal may be withdrawn at any time prior to the submission time specified in this Request for Proposal, provided notification is received in writing before the submittal deadline. Proposals cannot be changed or withdrawn after the submittal deadline. No handwritten notations or correction will be allowed. The responding Contractor is solely responsible for all costs related to the preparation of the proposal.

The City of Atwater reserves the right to reject all proposals and waive any minor informalities or irregularities contained in this proposal. Acceptance of any proposal submitted pursuant to this Request for Proposal shall not constitute any implied intent to enter into a contract.

The contract award, if any, will be made to the Contractor who, in the City's sole discretion, is best able to perform the required services in a manner most beneficial to the City.

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# 1 INTRODUCTION TO RFP DOCUMENTS

## 1.1 RFQ Release

This Request for Qualifications (RFQ) is being issued by the City of Atwater (City). The City is soliciting proposals from entities (Proposer(s)) with demonstrated experience and qualifications in providing Temporary Roll-off Services such as those required in this RFP.

Sealed proposals for the provision of Collection Services will be accepted by the City of Atwater, City Clerk, 1160 Fifth Street Atwater, CA, 95301 no later than 3:00 p.m. PT on May 30, 2023.

The specific service requirements of the City's requested services are contained within the definitions and body of the Draft Franchise Agreement, which is attached to this RFQ. Prospective Proposers are encouraged to examine the Draft Franchise Agreement in its entirety to ensure an understanding of the services being requested herein.

In accordance with the Americans with Disabilities Act, persons needing assistance related to participation in any Pre-Proposal or similar meeting should contact the City Clerk's Office at (209) 357-6241 least 48 hours prior to any meetings. Proposers should be aware that the City's intent is for Temporary Roll-off Services to begin on July 1, 2023.

The RFQ will be available beginning May 22, 2023 on the City's website, at the following URL: <https://www.atwater.org/bids-rfps-rfqs/>. All proposal documents related to this solicitation will be posted by the City on the City's website as indicated above. In the event the RFQ document is obtained through any means other than the City's website, the City will not be responsible for the completeness, accuracy or timeliness of the RFP document. It is the Proposer's responsibility to ensure that the most complete and current version of the RFQ document has been downloaded or otherwise obtained, including any addenda.

Before submitting a response, each Proposer shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the Franchise Agreement and to verify any representations made by the City. If the Proposer receives an award as a result of its proposal submission, failure to have made such investigations and examinations will in no way relieve the firm from its obligation to comply in every detail with all provisions and requirements of Franchise Agreement, nor will ignorance of such conditions and requirements be accepted as a basis or justification for any claim whatsoever by the firm for additional compensation.

Proposers are also required to review the documents listed below. These additional documents can be found on the City of Atwater website at the following URL: <https://www.atwater.org/bids-rfps-rfqs/>.



Any questions with regard to submissions, process, or proposals can be emailed to Justin Vinson, Public Works Director at [jvinson@atwater.org](mailto:jvinson@atwater.org).

All questions must be submitted in writing and in accordance with the schedule put forth in Section 1.2 of this RFP.

The City’s intent is to provide Temporary Roll-off Services in the most effective and economical manner and therefore it will make the provider selection based on which Proposer best fulfills the requirements and provides the best value to the City and its residents and businesses. The City reserves the right to reject any and all responses to this RFQ without any cause whatsoever.

## 1.2 Procurement Schedule

The City plans to adhere to the following procurement schedule to the extent possible. Changes to the procurement schedule shall be at the sole option of the City. Table 1 on the following page provides the major milestones of this RFQ process.

TABLE 1 PROCUREMENT SCHEDULE	
Activity	Date
RFP Released	May 22, 2023
Last Day to Submit Questions	May 25, 2023 by 3:00 p.m. PT
Proposals Due	May 30, 2023 by 3:00 p.m. PT
City Council Award of Agreement	June 26, 2023
Start Collection Services	July 1, 2023

## 1.3 Procurement Goals/Summary of Intent

The goals of this procurement process are to:

- Ensure compliance with solid waste legislation including AB 939, AB 341, AB 1826, AB 1594, SB 1016, SB 1669, and SB 1383;
- Ensure compliance with other State laws that have been adopted since July 2013, when the prior franchise agreement was last amended and restated;
- Enhance food waste collection in compliance with AB 1826 and SB 1383;
- Anticipate and flexibly accommodate future statutory changes;
- Maintain a high level of customer service for the least possible and reasonable cost;
- Retain all other provisions of the franchise agreement.

The City’s intent with the services provided as part of this RFQ is to continue to provide the community with the appropriate level of service, at the highest quality, and at the best price. The specifications contained within this RFQ are designed to establish an effective, efficient, environmentally clean, uniform, and safe system of collection.

To this end, the City has tried to provide as much information as possible to all prospective Proposers in this RFQ to allow them to properly prepare their responses and compute fair and reasonable compensation and rate quotes.

#### 1.4 Summary of Requested Services

The City has proposed the following services to be provided by Contractor:

- Temporary Roll-off bin rentals

#### **Contractor Payments to City**

- Quarterly Administrative Fee;

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## 2 BACKGROUND INFORMATION

### 2.1 Introduction

The purpose of this section of the RFQ documents is to familiarize prospective Proposers with the City and its current and proposed solid waste services.

Any term that is capitalized in this section is specifically defined in the Franchise Agreement, and the meaning of such term is solely as defined therein. **Each Proposer is encouraged to fully review the Draft Franchise Agreement.** A copy of the Draft Franchise Agreement is included in this RFQ.

### 2.2 Geography and Demographics

The City of Atwater is located approximately 28 miles west-northwest of Merced and within Merced County.

The City of Atwater is a community of about 32,000 with a projected annual growth at 4%, situated within a valley in southern California. Currently there are 7,127 Residential Accounts, and 474 Commercial Accounts



#### 2.2.1 Temporary Roll-off Collection Services

Currently, temporary debris box and roll-off services are provided to Service Recipients on an as-needed basis by Republic.

### 2.3 Service Rates

Roll-off Service Recipients are charged on a per-pull basis plus the cost of disposal.

### 2.4 Service Data

Table 1 includes the reported tonnage data from Republic in 2020 and 2021. **The City does not guarantee the accuracy of the information provided in Table 1 below. As noted above, the City neither warrants nor accepts responsibility for the accuracy of the information contained herein. It is the responsibility of the Proposer, at its sole cost, to conduct its own investigation and research and to independently verify all material facts and information necessary for it to submit a response to this RFP.**

City of Atwater Request for Temporary Roll-off Services

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<b>TABLE 1</b> <b>Tonnage Data</b> (as Reported by Republic)		
	<b>2020</b> <b>Tons</b>	<b>2021</b> <b>Tons</b>
<b>Roll off/Debris Box</b>		
Roll off/Debris Box Disposed	2547	3524
Roll off/Debris Box Recycled	285	374
<b>Subtotal Roll off/Debris Box Disposed</b>	<b>2832</b>	<b>3898</b>
<b>Subtotal Roll off/Debris Box Diverted</b>	<b>20%</b> <b>Rec-57</b>	<b>20%</b> <b>Rec-75</b>
<b>Subtotal Roll off</b>	<b>2775</b>	<b>3823</b>

### 3 PROPOSED SERVICES

Temporary Roll-off's Services included in this procurement process are to be provided in the incorporated City limits of Atwater ("City Service Area"). Following City Council approval, Collection Services will start on July 1, 2023 and will terminate on June 31, 2033, providing for a ten (10) year Agreement. The term of the Agreement may be extended by up to five (5) additional years, at the City's sole option, subject to City Council approval, and subject to the Contractor meeting performance requirements as specified in the Franchise Agreement.

#### 3.1 Overview of Base Services

Roll-off Containers ranging in size from 10 to 40 cubic yards and will be provided to Service Recipients utilizing temporary Roll-off Containers for temporary scheduled collection service.

#### 3.2 Disposal and Processing Facilities

The Proposer agrees, without constraint as a free-market business decision in accepting this Agreement, agrees to use the Disposal Site, Recyclable Materials Processing Site, and Organic Materials Processing Site as approved and directed by the City for the purpose of Disposing of all solid waste, and Transfer and Processing of all Recyclable Materials and Organic Waste it collects in the City. Such decision by the Proposer in no way constitutes a restraint of trade notwithstanding any change in Law regarding flow control limitations or any definition thereof.

#### 3.3 Diversion Standards

The Contractor will be responsible for diverting from disposal at least **forty percent (40%)** of all materials the Contractor collects from all services under the provisions of the Franchise Agreement, starting July 1, 2023, and measured for calendar year 2023. Subsequently, Contractor shall divert a minimum of forty-five percent (45%) of all materials it collects pursuant to this Agreement for calendar year 2023, fifty percent (50%) of the materials it collects pursuant to this Agreement for calendar years 2024 and 2025, and fifty-five percent (55%) of the materials it collects pursuant to this Agreement for calendar year 2026 and onwards. The Proposer must also provide their methodology for assisting the City in achieving the State's seventy-five percent (75%) diversion goal.

##### 3.15.1 Administrative Fee

Contractor shall pay an Administrative Fee to the City. The Administrative Fee will be a percentage of Contractor's Gross Billings submitted to the City quarterly under the terms of this Agreement. The Administrative Fee percentage shall be **Five Percent (5.00%) of Gross Billings** unless otherwise adjusted by the City.

##### 3.15.2 Annual Billing and Account Reconciliation

The Contractor must, on a quarterly basis, submit to the City, a summarized accounting certified by the hauler, of the services performed the previous 3 (three) months, listing the customers services and refuse collected and disposed for each customer. Included with said accounting shall be the payment to the city for the administrative fee for the previous 3 (three) months of activity.

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## 4 GENERAL INSTRUCTIONS

### 4.1 RFQ Documents

These RFQ documents, any subsequent Addenda, and attachments provided on the City's website constitute the complete set of proposal specifications and forms. All forms and applicable documents must be executed and submitted in a sealed envelope, as described in Section 5 of this RFQ. Proposals not submitted on the prescribed proposal forms shall be rejected. By submitting a proposal, the Proposer agrees to be subject to all terms and conditions specified herein. No exception to the terms and conditions shall be allowed. Submittal of a response to this RFQ constitutes a binding offer by the Proposer.

Proposers are expected to examine the RFQ documents.

### 4.2 Additional Terms and Conditions

No additional terms and conditions included with the RFQ shall be evaluated or considered.

### 4.3 Interpretations and Inquiries

Any questions concerning the intent, meaning, and interpretation of the RFQ documents shall be submitted in writing and received no later than 3:00 p.m. PT on May 25, 2023. Questions not submitted in writing will not be accepted or considered. Written inquiries shall be addressed by email to:

**City of Atwater**  
**Public Works Director**  
**Justin Vinson**  
[jvinson@atwater.org](mailto:jvinson@atwater.org)

### 4.4 Verbal Agreements

No verbal agreement or conversation with any elected or appointed officer, agent, or employee of the City, either before or after execution of the Franchise Agreement, shall affect or modify any of the terms or obligations contained in the Franchise Agreement. Any such verbal agreement or conversation shall be disclosed in the proposal and considered as unofficial information and in no way binding upon the City or the Proposer. No person is authorized to give oral interpretations of, or make oral changes to the RFQ documents. Therefore, oral statements will not be binding and shall not be relied upon. Any interpretation of, or changes to the RFQ documents will be made in the form of a written addendum to the RFQ document. Addenda will be posted via the City's website at the following URL: <https://www.atwater.org/bids-rfps-rfqs/>.

Only those interpretations of, or changes to the RFQ document that are made in writing and furnished to the Proposers by the City may be relied upon.

### 4.5 Qualification of Proposer

The Proposer must be qualified by experience, adequate financing and ability to provide all labor and equipment to do the work called for in the Franchise Agreement.



#### 4.6 Conflict of Interest

All Proposers must disclose, with their proposal, the name of any officer, director, agent, stockholder, or any relative of an officer, director, agent, or stockholder who is an employee, elected official or appointed official of the City. Furthermore, all Proposers must disclose the name of any City employee, elected official or appointed official who owns, directly or indirectly, an interest of five percent (5%) or more in the Proposer's firm or any of its branches or subsidiaries.

#### 4.7 Non-Collusion Affidavit of Proposer and Disclosure of Non-Compete Agreements

Any Proposer submitting a proposal to this RFQ must complete and sign the Non-Collusion Affidavit of Proposer and Disclosure of Non-Compete Agreements form included in Section 7 of these RFQ documents, and submit that document with its proposal. This shall include disclosure of any and all "non-compete agreements" that Proposer may have with other solid waste service providers that would prohibit other solid waste service providers from proposing on this RFQ.

#### 4.8 Disqualification of Proposers

More than one (1) proposal from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. Reasonable grounds for believing that a Proposer is involved in more than one proposal for the same work will be cause for rejection of all proposals in which such Proposers are believed to be involved.

#### 4.9 Legal Requirements

Proposers are required to comply with all provisions of federal, state, county, and local laws, ordinances, rules and regulations that are applicable to the services being offered in this RFQ. Lack of knowledge of the Proposer shall in no way be a cause for relief from responsibility or constitute a cognizable defense against the legal effects thereof.

#### 4.10 Familiarity with Laws and Ordinances

The submission of a proposal for the services requested herein shall be considered as a representation that the Proposer is familiar with all Federal, State, and local laws, ordinances, rules, orders, and regulations which affect those engaged or employed in the provision of such services, or equipment used in the provision of such services, or which in any way affects the conduct of the provision of such services; and no plea of misunderstanding will be considered on account of ignorance thereof.

#### 4.11 Contractual Agreement

The City shall not be obligated to any Proposer to enter into a Franchise Agreement with the Proposer despite the City's governing body prospectively awarding the Franchise Agreement to a Proposer. The City shall be obligated to a Proposer if and only if the City enters into a Franchise Agreement for the services with the Proposer, and further, no action will lie against the City to compel the City to execute any such Franchise Agreement, or to recover from the City any damages, costs, lost profits, expenses, etc., that any Proposer may incur if the City chooses not to sign such Franchise Agreement. Except for a proposer's obligation to negotiate the terms and conditions of a Franchise Agreement with the City, as secured by the Proposal Bond required under Sections 1.1 and 4.15, herein, no enforceable contractual relationship arises until the City signs the Franchise Agreement, no action shall require the City to sign such Franchise

Agreement at any time, and each Proposer waives all claims to damages, lost profits, costs, expenses, etc., as a result of the City not signing such Franchise Agreement.

#### 4.12 Facilities

The City reserves the right to inspect each Proposer's facilities at any reasonable time, during normal working hours, with prior notice to determine that the Proposer has a bona fide place of business and is a responsible Proposer. The Proposer must maintain their facilities and perform collection services in compliance with City Code. Should the Proposer be found in violation with City Code, the City holds the right to withhold **ten percent (10%)** of the Contractor's compensation until compliance is achieved.

#### 4.13 Insurance

The City will establish insurance requirements in the Franchise Agreement. Proposers must review and obtain an understanding of these requirements contained in the Draft Franchise Agreement, to be provided.

#### 4.14 Agreement Modifications

The City reserves the right to make modifications to the Draft Franchise Agreement to more fully effectuate the intent of this RFQ and the City's Collection Services program.

As stated in Section 5.5.6, Proposers may provide a list of Franchise Agreement exceptions, subject to the requirements in that section. **The City has no obligation to accept any proposed service alternative or Franchise Agreement exception.** Proposals will be evaluated based on the required services and Agreement language as set forth in this RFQ.

#### 4.15 Withdrawal or Revision of Proposal Prior to the Closing Time Set for Receiving Proposals

A Proposer may, prior to the due date and time of the Proposal, and without prejudice, withdraw, modify, or correct a proposal after it has been deposited with the City, provided a request is made in writing to the City, whose name, address, and contact information is provided herein. Any revision shall be deposited prior to the closing time set for receiving proposals. Modification or corrections of proposals shall be made by means of sealed written communications, provided such modifications or corrections are received by the City prior to the closing time set for receiving proposals with the outside envelope properly marked to identify that it is to be a part of this RFQ.

No corrections in proposals will be acceptable unless each correction is signed by the Proposer and provided in hard-copy to the City. A proposal in which omissions occur or which has been conditioned by the Proposer in a manner that is unacceptable to the City may be rejected. Corrections may be made until the closing time set for receiving proposals in a sealed envelope, properly marked to identify that it is to be a part of this RFQ. No modifications or corrections may be made subsequent to closing time set for receiving proposals.

#### 4.16 Acceptance or Rejection of Proposals

The City reserves and holds at its discretion the following rights and options:

- Issue addenda to the RFQ, including extending or otherwise revising the timeline for submittals;
- Cancel the RFQ;
- Request clarification and/or additional information from the Proposer at any point in the evaluation process;
- Execute a Franchise Agreement on the sole basis of the original proposal or any one or more additions to proposal submissions;
- Reject any or all proposals, waive irregularities in any proposal, accept or reject all or any part of any proposal, waive any requirements of the RFP, as may be deemed to be in the best interest of the City; and/or
- Reissue the RFQ.

Any or all proposals will be rejected if there is reason to believe that collusion existed among the Proposers. Proposals received from participants in such collusion will not be considered for the same work when and if re-advertised.

#### 4.17 Award of Agreement

A Temporary Roll-Off Collection Service Agreement and Franchise Agreement shall only be awarded by the Atwater City Council and based upon the proposal which best fulfills the requirements and provides the best value to the City, its residents, and businesses. No award will be made until all necessary investigations have been made to determine the responsiveness and responsibility of the Proposer under consideration. After opening the proposals, the City may require the selected Proposer to submit a verified statement disclosing all ownership interests, whether direct, indirect, or beneficial, and including intermediate and ultimate ownership interests where several levels of ownership exist, disclosing any single source in excess of thirty percent (30%) of outstanding debt, and disclosing any person or entity that has guaranteed in excess of thirty percent (30%) of the Proposer's outstanding debt; furthermore, such disclosure shall contain any information of or relating to any and all common ownership, control, management, or common pecuniary benefit the proposing entity, its owners, management, or representatives possess or retain in any other entity now participating, or proposing to participate, in the Franchise Agreement with the City. The City Council shall be the sole judge as to the responsiveness and the responsibility of the Proposer to satisfactorily perform the work specified within the Franchise Agreement.

As soon as practicable after opening the proposals, the Proposer recommended for award of the Franchise Agreement will be submitted to the City Council for approval.

In the event the City Council approval is not received within **one hundred and eighty (180) calendar days** after opening of the proposals, and a proposal extension is not agreed upon by the Proposer and City, then the Proposer(s) may request that it be released from the Franchise Agreement obligation and that its proposal bond is released, in which case the City shall release the Proposer's bond.

The foregoing action by the City or the Proposer(s) shall in no way provide any cause whatsoever for claim against the City by the Proposer(s).

Prior to award of a Franchise Agreement, the City will issue a "Notice of Intent" to award to all Proposers on the City's website. Proposers shall have five (5) business days from the date of the Notice of Intent to submit written protest of the City's intent to award.

#### 4.18 Addendum

Any addenda issued in conjunction with this RFQ must be submitted as part of the original proposal packet with a wet signature. Any addenda will be posted to the City's website at the following URL: <https://www.atwater.org/bids-rfps-rfqs/>.

The Proposer shall sign each addendum issued and shall attach an addendum acknowledgement sheet to their proposal in order to have the proposal considered. If signed versions of the addenda are not included with the original proposal, the proposal will be deemed non-responsive and will not be considered. If it becomes necessary to issue an addendum that requires a change in the RFQ or the Draft Franchise Agreement within five (5) days of the due date for proposals, the City will extend the due date as necessary to allow Proposers to address changes in their proposals.

Informational questions and answers that do not require formal changes to the RFQ or Draft Franchise Agreement will also be posted on the City's website provided above. These may be provided as informational items, and not formal addenda.

#### 4.19 Certification of Service Area Conditions, Service Area Requirements, and Agreement Terms

By the submission of a proposal to do the work, the Proposer certifies that a careful examination of the Service Area, all RFQ documents, including the Draft Franchise Agreement, has taken place, and that the Proposer is fully informed concerning the requirements of the RFQ documents and Draft Franchise Agreement, the physical conditions to be encountered in the work, the quality and quantity of service to be performed, and of materials and equipment to be furnished. **The Proposer will not be entitled to additional compensation upon subsequently finding that conditions require methods or equipment other than that anticipated in making the proposal.**

#### 4.20 All Proposals are Public Records

All correspondence with the City including responses to this RFQ will become the exclusive property of the City and will become public records under the California Public Records Act (Cal. Government Code sections 6250 et seq.) All documents, and non-exempt portions thereof, that are sent to the City will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.

Therefore, any proposal which contains language purporting to render all or significant portions of the proposal "Confidential", "Trade Secret" or "Proprietary" and fails to provide the exemption information required as described below will automatically be considered a public record in its entirety and shall be disclosed to the requesting party without further consideration or notice.

**Do not mark your entire proposal as "Confidential".**

The City retains the right not to disclose any part of any proposal before it completes negotiations, on the

ground that there is a substantial public interest in not disclosing proposals during the evaluation and negotiation process. After the completion of negotiations, all proposals received in response to this RFP will be subject to public disclosure. If you believe that there are portion(s) of your proposal which are exempt from disclosure under the Public Records Act, you must mark each page as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if you submit trade secret information, you must plainly mark the information as “Trade Secret” and refer to the appropriate section of the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. Only information claimed to be a trade secret at the time of submittal to the City of Atwater, marked as “Confidential”, “Trade Secret” or “Proprietary” and accepted by the City as exempt from disclosure, will be treated as a trade secret.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked “Trade Secret” or “Proprietary”, the City will provide Proposer(s) who submitted the information with reasonable notice in order for Proposer(s) to seek protection from disclosure by a court of competent jurisdiction.

#### 4.21 Business License

A City of Atwater Business License is required upon award of the Franchise Agreement, which shall be obtained and paid for by the successful vendor (if not already so licensed).

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## 5 PROPOSAL PREPARATION INSTRUCTIONS

### 5.1 Receipt of Proposals

The City will accept written and sealed proposals to furnish all labor, equipment, materials, tools, insurance, supervision, and all other items incidental thereto, and to perform all work necessary and specified in the prescribed manner and time to provide Collection Services in the City Service Area in accordance with the terms and conditions set forth in the Franchise Agreement. **Two (2) hard copies and one (1) reproducible sealed proposals will be accepted until 3:00 p.m. PT on May 30, 2023 at the office listed below.**

Each proposal and supporting documentation must be submitted in a sealed envelope or container plainly labeled in the lower-left corner: "PROPOSAL Temporary Roll=Off Services" along with the proposal submission date. Proposers must also include their company name and address on the outside of the envelope or container. Proposals must be delivered to:

**City of Atwater  
Attention: Janell Martin  
The City of Atwater City Clerk  
1160 Fifth Street  
Atwater, CA 95301**

Proposers are responsible for making certain that proposals and addenda or written modifications are delivered to the City at the above address. Mailing of a proposal or receipts of postal or other delivery agents does not ensure that the proposal will be delivered on time or delivered at all.

Proposals will be accepted in person, by United States Mail, or by private courier service. Postmarks will not be accepted in lieu of this requirement. No proposals will be accepted by oral communication, telephone, fax, or e-mail. Proposals may be withdrawn prior to the above scheduled time set for receipt of proposals. No Proposer may withdraw a proposal after the above scheduled time for opening the proposals. Any proposal received after the date and hour specified will be rejected and returned unopened to the Proposer.

The City reserves the right to postpone the date and time for opening proposals through an addendum.

### 5.2 General Provisions

All prices and proposals must be in ink or typewritten. No pencil figures or erasures are permitted. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by person signing the proposal. All proposals must be signed in ink with the firm's name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

### 5.3 Preparation of Proposals

Two (2) sets of the proposals with a cover indicating the Proposer name and proposal title and number must be submitted.. Additional copies may be requested by the City at its discretion. All blank spaces must be filled in and noted, in **blue ink or typed**, with amounts extended and totaled as appropriate.

All required original signatures must be in **blue ink**. All corrections made by the Proposer to any part of the RFP document must be initialed in **blue ink**.

Only one (1) proposal from any individual, firm, partnership, or corporation under the same or different names will be considered.

Proposals by corporations must be executed in the corporate name by two (2) corporate officers. The original RFP submitted must be signed as an original. One signature must be from the chairman, president, or vice-president, and the other signature must be from the chief financial officer, assistant treasurer, secretary, or assistant secretary. The corporate address and state of incorporation must be shown below the signature.

Proposals by partnerships must be executed in the partnership name and signed by a partner. His/her title must appear under his/her signature, and the official address of the partnership must be shown below the signature.

Proposals by limited liability companies must be executed in the company's name and signed by a managing member.

No Proposer shall take exception to the specifications herein. Proposals taking exception to the specifications may be rejected as non-responsive.

## 5.4 Proposal Content

In order to expedite the evaluation process, each proposal shall be organized in accordance with this Section as outlined in Table 6. Instructions for preparing each section of the proposal shown in the outline are given in the following subsections. Proposals that do not follow the specified format outlined below, or fail to provide the required documentation, may receive lower scores during the evaluation process. In the event of any conflict between any of the proposal documents, resolution thereof shall be in the City's sole discretion.

The Proposers shall provide the information as requested and as applicable to the proposed services. Headings and section numbering utilized in the proposal shall be the same as those identified in Table 6. Proposals shall include the following information in the format indicated.

SECTION	TABLE 6 OUTLINE FOR PROPOSAL
1	COVER LETTER
	EXECUTIVE SUMMARY
	APPENDIX

### 5.4.1 Cover Letter, Executive Summary, Proposal Bond, Performance Bond Commitment Letter, Signed Copies of Addenda, Table of Contents

All proposals must be accompanied by a cover letter not exceeding the equivalent of four (4) pages and should provide as follows:

- Name, address, telephone number, fax number, and email address of applicant's key contact person.



- Description of the type of organization (e.g. corporation, partnership, limited liability company, including joint venture teams and subcontractors) submitting proposals.
- Name of the entity that will sign the Franchise Agreement, in the event one is awarded.
- A written statement certifying that Proposer has examined, understood, and agreed to the Franchise Agreement.
- A written statement warranting that the requirements of the Draft Franchise Agreement as described in this RFQ document, its enclosures, and all addenda, by listing all addenda and dates received, have been thoroughly reviewed and the Proposer has conducted all due diligence necessary to confirm material facts upon which the proposal is based.
- A written statement acknowledging that the Proposer will enter into the Franchise Agreement with the City if selected as the City's Collection Service provider.

The following items should be appended to the cover letter:

- Executive Summary – Not to exceed six (6) pages. Must highlight the major elements of the Proposer's qualifications and proposal, including a brief description of the Proposer's initial plan, technical approach, schedule, and facilities to be used. All information should be provided in a concise manner.

Signed Copies of Addenda acknowledging receipt, if any addenda's were issued.

### 5.5.2 Appendix

Proposers may provide any additional technical information (i.e. only information specifically related to equipment of services to be provided) that they believe to be applicable to this proposal and include such information as an appendix. Proposers are discouraged to include marketing material, education and outreach material or other additional information not related to the equipment or services to be provided. Any proposed redlines to the Temporary Roll-Off Collection Service Agreement and Franchise should be included in here.

## 5.5 Evaluation of Proposals

Those proposals that have passed the initial "Pass/Fail" review described below will be evaluated and scored by the Evaluation Team, which may consist of City staff members, consultants and City Council members, based on the following evaluation criteria:

- Executive Summary

The results of the evaluation process will be presented to the City Council for direction by City Council on the next steps following the evaluation and negotiation process. In determining and evaluating the best proposal, the prices will not necessarily be controlling, but quality, equality, efficiency, utility, general terms, delivery, suitability of the service offered, and the reputation of the service in general use will also be considered, with any other relevant factors.

The following subsections provide a brief discussion of each of the evaluation criteria listed above.

### 5.5.1 Pass/Fail Review

A panel of City staff members and such other parties as the City deems necessary, will conduct an initial

## City of Atwater Request for Temporary Roll-off Services

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“Pass/Fail” review of all proposals submitted to check for completeness and compliance with the proposal requirements. Proposals that have been determined to be complete and in compliance with the proposal requirements will undergo further evaluation. Proposals that are not complete or are not in compliance with the submittal requirements may be disqualified from further evaluation and will be returned to the Proposer.

## **6 PASS/FAIL SUBMISSION CHECKLIST**

**THE FOLLOWING DOCUMENTS MUST BE SUBMITTED TO COMPRISE A COMPLETE PROPOSAL**

\_\_\_\_\_ Proposal Cover Letter (signed)

\_\_\_\_\_ Executive Summary

\_\_\_\_\_ Appendix (if applicable)

## **TEMPORARY ROLL-OFF COLLECTION SERVICE AGREEMENT AND FRANCHISE**

This Temporary Roll-Off Collection Services Agreement and Franchise ("Agreement") is entered into this [DAY] of [MONTH], 2023, by and between the City of Atwater, a general law city and municipal corporation in the State of California ("CITY"), and [CONTRACTOR NAME HERE], ("CONTRACTOR") on the terms and conditions set forth herein. CITY and CONTRACTOR may be referred to herein individually as a "Party" or collectively as the "Parties." Capitalized terms not otherwise defined shall have those definitions as hereinafter set forth in Article 2, "Definitions."

### **RECITALS**

**A.** The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, ("**AB 939**" or the "**Act**") (codified at Public Resources Code §§ 4000 *et seq.*) established a solid waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse, and recycling as integrated waste management practices for solid waste attributed to sources within their respective jurisdictions; and

**B.** The Act provides that aspects of solid waste handling of local concern include, but are not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and the nature, location, and extent of providing solid waste services; and

**C.** The Act confers discretion on cities to provide for the delivery of refuse services to its residents by the CITY itself providing the services or by the CITY conferring the authority to do so on private profit-making entities; and when cities confer the authority to provide refuse services on private profit-making entities cities are authorized to do so by means which include the award of a nonexclusive, partially exclusive or wholly exclusive franchise, contract, license, or otherwise; and

**D.** The City Council during its regular meeting of March 27, 2023, approved the award of an exclusive franchise agreement ("**PRIMARY AGREEMENT**") for comprehensive refuse services with Mid Valley Disposal ("**PRIMARY CONTRACTOR**") because the City Council determined, in the exercise of its legislative discretion, that **PRIMARY CONTRACTOR** would provide high quality services to Service Recipients; and

**E.** The franchise approved with **PRIMARY CONTRACTOR** contemplated the operation of a second exclusive contract hauler within the CITY, limited to the provision of temporary roll-off collection services; and

**F.** Pursuant to Public Resources Code section 40059(a)(1) and Atwater Municipal Code section 8.16.030, the City Council of the CITY has determined, in the exercise of its legislative discretion, that it is in the best interests of the CITY and its residents to award a second exclusive franchise for the limited purpose of providing temporary roll off collection services to be performed by a second Solid Waste private enterprise with the special skills, knowledge, facilities, and other capabilities to ensure a high level of service and compliance with the existing statutory and regulatory requirements; and

## AGREEMENT

Now, therefore, in consideration of the mutual covenants, agreements, and other good and valuable consideration contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, CITY and CONTRACTOR agree as follows:

1. Recitals. The Parties acknowledge the above recitals are true and correct and incorporate them as though fully set forth herein.

2. Definitions. For the purpose of this Agreement, the definitions contained in this Article apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender includes the feminine gender. The meaning of terms or words not defined in this Article will be as commonly understood in the solid waste collection services industry when the common understanding is uncertain.

Agreement. This written document and all amendments, between CITY and CONTRACTOR, governing the provision of Collection Services.

Agreement Administrator. The City Manager, or his or her designee, designated to administer and monitor the provisions of this Agreement.

Agreement Year. Agreement Year means each twelve (12) month period from July 1<sup>st</sup> to June 31<sup>st</sup> of the following calendar year during the term of this Agreement.

Applicable Law. All federal, state, county, and local laws, regulations, rules, orders, judgments, decrees, rulings, permits, approvals, or other requirement of any governmental entity or regulatory or quasi-regulatory authority having jurisdiction over an aspect of the Collection Services, including judicial interpretations thereof, that are in force on the Effective Date including without limitation AB 341, AB 939, AB 1594, AB 1826 and SB 1383, and as may be enacted, issued, or amended thereafter, until termination or expiration of this Agreement.

Brown Goods. Electronic equipment such as stereos, televisions, computers, VCR's and other similar items collected from SFD Service Units.

Business. All retail, professional, wholesale and industrial facilities, and other commercial enterprises offering goods or services to the public.

Business Days. Any Monday through Friday, excluding any holidays.

Calendar Year. Each twelve (12) month period from January 1<sup>st</sup> to December 31<sup>st</sup>.

CITY. The City of Atwater, California.

City Manager. City Manager means the City Manager of the City of Atwater, or his or her designated representative, or any employee of the CITY who succeeds to the duties and responsibilities of the City Manager.

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Code. Code means the City of Atwater Municipal Code.

Collection. The process whereby Solid Waste is placed in a Roll-Off Container set out by CONTRACTOR on a temporary basis and subsequently removed and transported by CONTRACTOR to a disposal or recycling facility as appropriate.

CONTRACTOR. [REDACTED], the entity that has obtained from the CITY this Agreement to provide Roll-Off Collection Services.

CONTRACTOR Representative. The person, or designee, designated by the CONTRACTOR to manage the provisions of this Agreement.

County. Merced County, California.

Disposal Facility. The CITY-approved facility(ies) utilized by CONTRACTOR for the disposal, or processing as appropriate, of Solid Waste and other materials as appropriate and acceptable.

Materials Recycling Facility (MRF). The CITY-approved facility(ies) designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Materials for sale. CONTRACTOR must transport all collected Recyclable Materials to this/these facility(ies).

Organic Waste Processing Facility. The CITY-approved facility(ies) designed, operated, and legally permitted for the purpose of receiving, and processing Food Waste, Green Waste, Large Green Waste, and Other Organics. CONTRACTOR must transport collected Organic Waste to this/these facility(ies).

Person. Person includes, but is not limited to, any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Merced, towns, cities, and special purpose districts.

Roll-Off Collection Service. The placement by CONTRACTOR, on a temporary basis, and subsequent collection by CONTRACTOR of Roll-Off Containers containing Solid Waste.

Roll-Off Container. A metal container with a capacity of ten (10) or more cubic yards that is normally loaded onto a motor vehicle and transported to an appropriate facility. CONTRACTOR's Roll-Off Containers are more particularly described in **Exhibit 1**, attached hereto and incorporated herein by reference.

SB 1383. State of California Senate Bill 1383, approved September 19, 2016, mandates a fifty percent (50%) reduction statewide in disposal of Organic Materials from the 2014 levels by 2020 and seventy-five percent (75%) by 2025. A seventy-five percent (75%) reduction from the 2014 level requires California to limit disposal to roughly five (5) million tons of organics annually on and after 2025. Further, SB 1383 requires CalRecycle's regulations to include requirements designed to improve the recovery of edible food that is currently landfilled by twenty percent (20%) by 2025.

Service Area. That area within the city limits of the City of Atwater designated by CITY as the

## Attachment A Draft Franchise Agreement

Service Area as those limits may be adjusted from time to time by annexation or similar process as allowed under California law.

Service Recipient. An individual, Business, or the CITY, receiving Roll-Off Collection Service.

Solid Waste. The materials described in Public Resources Code section 40191, including Garbage, Recyclable Materials, Construction and Demolition Debris, and Large Items. Solid Waste specifically includes the following:

- A. Construction and Demolition Debris. Used or discarded materials resulting from construction, remodeling, repair, or demolition operations on any type of structure.
- B. Garbage. All putrescible and non-putrescible solid, semi-solid and associated liquid waste, as defined in California Public Resources Code section 40191. Garbage does not include Recyclable Materials, Organic Waste, Large Items, or Construction and Demolition Debris. Garbage must be generated by and at the Service Unit wherein the Garbage is Collected. Garbage must be generated by and at the Service Unit wherein the Garbage is Collected.
- C. Green Waste. Any vegetative matter resulting from normal yard and landscaping maintenance that is not more than five (5) feet in its longest dimension or six (6) inches in diameter or weighs more than fifty (50) pounds. Green Waste includes plant debris, such as grass clippings, leaves, pruning, weeds, branches, brush, Holiday trees, and other forms of organic waste and must be generated by and at the SFD Service Unit where the Green Waste is Collected.
- D. Large Green Waste. Oversized Green Waste such as tree trunks and branches with a diameter of not less than six (6) inches and not more than two (2) feet and a length of not more than five (5) feet in its longest dimension, which are attributed to the normal activities of an SFD Service Unit. Large Green Waste must be generated by and at the SFD Service Unit where the Large Green Waste is Collected, and is Collected by means of Large Item Collection.
- E. Large Items. Those materials including furniture; carpets; mattresses; White Goods; Brown Goods; Large Green Waste. Large Items must be generated by and at the Service Unit wherein the Large Items are Collected.
- F. Organic Waste. Green Waste, Large Green Waste, and Other Organics, either separately or commingled with each other, that has been separated at the source of generation from Garbage and Recyclable Materials.
- G. Recyclable Materials. Those materials which are capable of being recycled using available processes and markets and which would otherwise be processed or disposed of as Residential Garbage or Commercial Garbage. These materials will be as defined by CITY. CITY and CONTRACTOR agree to meet from time to time as needed to discuss additions or deletions from the list of Recyclable Materials.

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CONTRACTOR may request removal of Recyclable Materials due to market limitations, which request will be decided by the Agreement Administrator.

- H. White Goods. Inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.

Temporary Roll-Off Service. Collection Service through the use of Roll-Off Containers to Service Recipients for a limited period of time not to exceed thirty days except that Collection Service related to an on-going construction project may do so through completion of the construction project. All construction projects must have an active City building or demolition permit.

Work Day. Any day, Monday through Saturday, that is not a holiday as set forth in this Agreement.

3. Grant of Exclusive Franchise. CITY hereby grants to CONTRACTOR and CONTRACTOR hereby accepts from CITY, the exclusive right and privilege to perform Roll-Off Collection Services within the CITY's Service Area, for the Term of and within the scope set forth in this Agreement. The right and privilege to provide Roll-Off Collection Services granted to CONTRACTOR by this Agreement shall be interpreted to be consistent with all applicable state and federal laws, now in effect and adopted during the Term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. In the event that future interpretations of current law or future enactments limit the ability of CITY to lawfully grant CONTRACTOR the scope of services as specifically set forth herein, CONTRACTOR agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that CITY shall not be responsible for any lost profits claimed by CONTRACTOR as a result thereof. The provisions of Title 8, Chapter 8.16 of the Atwater Municipal Code, as they now exist or as they may be amended, and the regulations adopted pursuant thereto, and any future amendments to said regulations, are specifically incorporated herein and made a part hereof as if fully set forth in this Agreement. If the scope of this Agreement is limited or changed due to changes in the Atwater Municipal Code not required by applicable federal or state law and if the changes result in a material change in costs or loss of revenue to CONTRACTOR, City and CONTRACTOR shall negotiate in good faith, a change in CONTRACTOR'S compensation or a reduction of services equal to the value of the adjustment if a change CONTRACTOR'S compensation cannot be implemented. If City and CONTRACTOR are unable to reach agreement about such a change in CONTRACTOR'S compensation or a reduction in services, then CONTRACTOR may terminate this Agreement upon six (6) months' written notice to City.

4. Franchise Fee. In consideration for CITY's grant of the rights outlined in this Agreement, for negotiation of this Agreement, and for retention of the longstanding relationship with CITY, CONTRACTOR shall pay to the City the amount of 5% of Gross billings unless otherwise adjusted by the City.

5. Scope of Franchise Limited. CONTRACTOR has no rights or interest beyond those expressly set forth in this Agreement.

6. Term of Agreement.

- A. Initial Term. Subject to the provisions of this Agreement relating to termination, the



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initial term of this Agreement is a ten (10) year period beginning midnight July 1, 2023 (the "Effective Date"), and terminating on 11:59 pm June 30, 2033 (the "Initial Term").

- B. Extension of Term Option. Provided that CONTRACTOR (1) is not then in default of any material term or condition of the Agreement; (2) has not been designated as a "habitual violator" as provided in this Agreement; and (3) that the Extension Term Option has not been voided as otherwise provided in this Agreement, CONTRACTOR may request a five (5) year term extension to the Initial Term (the "Extended Term") by providing CITY with written notice of the request at least eighteen (18) months prior to the expiration of the Initial Term. In that event, CITY shall meet and confer with CONTRACTOR at least two (2) times prior to expiration of the Initial Term, but under no circumstances will CITY be obligated to extend the term. Any extension shall be set forth in a written amendment to this Agreement.

7. Services Provided by Contractor.

- A. Equipment. CONTRACTOR shall furnish all labor, supervision, materials, supplies, and equipment necessary to provide for all services required by the terms of this Agreement.
- B. Service Standards. CONTRACTOR must perform all Roll-Off Collection Services under this Agreement in a thorough, workmanlike, and professional manner consistent with all relevant provisions of law.
- C. Noise and Disruption. CONTRACTOR shall perform all Collection Services as required hereunder in such a manner as to minimize noise and other disruptive impacts including, without limitation, those upon traffic. CONTRACTOR shall use its best efforts to coordinate its Collection schedules such that CONTRACTOR's Collection of Solid Waste occurs on the business day immediately preceding street sweeping on any given street.
- D. CONTRACTOR's Roll-Off Containers. CONTRACTOR's Roll-Off Containers must be compliant with SB 1383 and shall meet the minimum standards set forth on the attached **Exhibit 1**.
- E. Ownership of Materials. Except as provided otherwise under Applicable Law, title to Solid Waste will pass to CONTRACTOR at such time as said materials are placed in the appropriate collection container and set out for collection by CONTRACTOR.
- F. Voluntary Use of Facilities. The CONTRACTOR, without constraint as a free-market business decision in accepting this Agreement, agrees to use the Disposal Facility, Materials Recycling Facility, and Organic Waste Processing Facility as approved and directed by CITY for the purpose of Disposing of all Solid Waste,

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and Transferring and Processing of all Recyclable Materials and Organic Waste it collects in the CITY. Such decision by CONTRACTOR in no way constitutes a restraint of trade notwithstanding any change in law regarding flow control limitations or any definition thereof.

- G. Spillage and Litter. CONTRACTOR shall not litter any street, right-of-way, or premises in the process of providing Collection Services or while its vehicles are on the road. CONTRACTOR must transport all materials Collected under the terms of this Agreement in such a manner as to minimize the spilling or blowing of such materials from CONTRACTOR's vehicles. CONTRACTOR must exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of Solid Waste and must immediately, at the time of occurrence, clean up such spilled or dropped Solid Waste.
- a. Except as provided in this Agreement, CONTRACTOR is not responsible for cleaning up sanitary conditions caused by the carelessness of the Service Recipient; however, CONTRACTOR must clean up any material or residue that is spilled or scattered by CONTRACTOR or its employees and report such instances in writing to the CITY by the close business within one (1) working day of the occurrence.
  - b. Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from CONTRACTOR's operations or equipment repair must be covered immediately with an absorptive material and removed from the street surface. If such fluid leakage or spillage results in staining the street or sidewalk surface, CONTRACTOR must apply a suitable cleaning agent to the street surface to provide adequate cleaning.
  - c. The above paragraphs notwithstanding, CONTRACTOR must clean up any spillage or litter caused by CONTRACTOR within the same Work Day upon notice from the CITY.
  - d. To facilitate such cleanup, CONTRACTOR's vehicles must at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.
- H. Regulations and Record Keeping. CONTRACTOR must comply with emergency notification procedures required by applicable laws and regulatory requirements. All records required by regulations must be maintained at CONTRACTOR's facility. These records must include waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.
- I. Mutual Cooperation. CITY and CONTRACTOR will reasonably cooperate in good

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faith with all efforts by each other to meet CITY's diversion and other compliance requirements imposed by the Applicable Laws, including without limitation, AB 939, AB 341, AB 1826, AB 1594, SB 1016, and SB 1383, and to meet CONTRACTOR's obligations under this Agreement. In this regard, CITY's obligations include, without limitation, making such petitions and applications as may be reasonably requested by CONTRACTOR for time extensions in meeting diversion goals, or other exceptions from the terms of Applicable Laws, and to agree to authorize such changes to CONTRACTOR's Solid Waste Collection Services, or Collection Service programs as may be reasonably be requested by CONTRACTOR.

8. Insurance. CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work described herein and the results of that work by the CONTRACTOR, its agents, representatives, employees, or subcontractors. CONTRACTOR shall supply City with evidence of a current \$1,000,000 Liability Insurance Policy and a current Workers' Compensation Insurance Policy

9. General Indemnification. CONTRACTOR must indemnify, defend (with attorneys acceptable to CITY), and hold harmless CITY, CITY's contractors, and its elected and appointed public officials, officers, directors, employees, agents, volunteers, and other contractors of each of them (collectively, "CITY Indemnitees"), from and against any and all claims, costs, losses and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals as well as all court or other dispute resolution costs), liabilities, expenditures, or causes of action of any kind (including negligent, reckless, willful, or intentional acts or omissions of the CONTRACTOR, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), arising from, relative to or caused by the performance of the services (collectively, "Claims"). This indemnity includes but is not limited to Claims attributable to bodily injury, sickness, disease, or death, and to injury or destruction of tangible property. CONTRACTOR agrees, at CONTRACTOR's expense, after written notice from the CITY, to defend any action against the CITY Indemnitees that falls within the scope of this indemnity using counsel selected by CONTRACTOR and approved by CITY in its reasonable judgment. Additionally, if CONTRACTOR, after receipt of written notice from the CITY, fails to make any payment due under this Agreement to CITY, CONTRACTOR must pay any reasonable attorneys' fees or costs incurred by CITY in securing any such payment from CONTRACTOR. Payment of any amount due pursuant to the foregoing indemnity must, after receipt of written notice by CONTRACTOR from CITY that such amount is due, be made by CONTRACTOR prior to CITY being required to pay same, or in the alternative, CITY, at CITY's option, may make payment of an amount so due and CONTRACTOR must promptly reimburse CITY for the same, together with interest thereon at the rate of 12% per annum simple interest from the date of receipt by CONTRACTOR of written notice from CITY that such payment is due. The foregoing indemnity and hold harmless provisions shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death, or damage is also caused in part by any of CITY Indemnitees' negligence, but shall not extend to matters resulting from CITY Indemnitees' sole negligence or willful misconduct. CONTRACTOR's indemnity obligations shall survive the termination of this Agreement.

10. Termination. CITY may terminate this Agreement, except as otherwise provided below in this Section, by giving CONTRACTOR thirty (30) calendar days' advance written notice, to be served as

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provided in this Agreement, upon the happening of any one of the below-listed events. CONTRACTOR may only terminate this Agreement for cause.

- A. CONTRACTOR takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
- B. By order or decree of a court, CONTRACTOR is adjudged bankrupt or an order is made approving a petition filed by any of its creditors or by any of the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) calendar days after the entry thereof, any notice of default will be and become null, void and of no effect; unless such stayed judgment or order is reinstated in which case, such default will be deemed immediate; or
- C. By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of CONTRACTOR, and such possession or control continues in effect for a period of sixty (60) calendar days; or
- D. CONTRACTOR has defaulted, by failing or refusing to pay in a timely manner the administrative charges or other monies due CITY and such default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or
- E. CONTRACTOR has defaulted by allowing any final judgment for the payment of money owed to CITY to stand against it unsatisfied and such default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or
- F. In the event that the monies due CITY or an unsatisfied final judgment is the subject of a judicial proceeding, CONTRACTOR will not be in default if the sum of money is bonded. All bonds must be in the form acceptable to the CITY Attorney; or
- G. CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement or any of the rules and regulations promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Agreement Administrator relative thereto and such default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so, or if by reason of the nature of such default, the same cannot

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reasonably be remedied within thirty (30) calendar days following receipt by CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails to commence the remedy of such default within such thirty (30) calendar days following such written notice or having so commenced fails thereafter to continue with diligence the curing thereof (with CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure such default, and such default will be cured within a reasonable period of time).

11. Violations. Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this Article, in the event that CONTRACTOR's record of performance shows that CONTRACTOR has defaulted in the performance of any of the covenants and conditions required herein excepting those for which CITY's remedy is to levy and collect a penalty as Administrative Charges under Article 14, to be kept and performed by CONTRACTOR three (3) or more times in any twenty-four (24) month period, and regardless of whether the CONTRACTOR has corrected each individual condition of default, CONTRACTOR will be deemed a "habitual violator," will be deemed to have waived the right to any further notice or grace period to correct, and all such defaults will be considered cumulative and collectively will constitute a condition of irredeemable default. CITY will thereupon issue CONTRACTOR a final warning citing the circumstances therefore, and any single default by CONTRACTOR of whatever nature, subsequent to the occurrence of the last of such cumulative defaults, will be grounds for immediate termination of the Agreement. In the event of any such subsequent default, CITY may terminate this Agreement upon giving of written final notice to CONTRACTOR, such cancellation to be effective upon the date specified in CITY's written notice to CONTRACTOR, and all contractual fees due hereunder plus any and all charges and interest will be payable to such date, and CONTRACTOR will have no further rights hereunder. Immediately upon the specified date in such final notice CONTRACTOR must cease any further performance under this Agreement.

12. Effective Date of Termination. In the event of any the events specified above, and except as otherwise provided in such subsections, termination will be effective upon the date specified in CITY's written notice to CONTRACTOR and upon such date this Agreement will be deemed immediately terminated and upon such termination all liability of CITY under this Agreement to CONTRACTOR will cease, and CITY will have the draw down on the Letter of Credit and will be free to negotiate with other contractors for the operation of interim and long-term Collection Services. CONTRACTOR must reimburse CITY for all direct and indirect costs of providing any interim Collection Services as a result of CONTRACTOR's default in this Agreement.

13. Immediate Termination. CITY may terminate this Agreement immediately upon written notice to CONTRACTOR in the event CONTRACTOR: (a) fails to provide and maintain Letter of Credit as required by this Agreement; (b) fails to obtain or maintain insurance policies endorsements as required by this Agreement; (c) fails to provide the proof of insurance as required by this Agreement; or (d) offers or gives any gift to a CITY official or employee prohibited by CITY's Municipal Code.

14. Termination Cumulative. CITY's right to terminate this Agreement is cumulative to any other rights and remedies provided by law or by this Agreement.

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15. CONTRACTOR's Remedies; Claims. CONTRACTOR shall be entitled to all available remedies in law or equity for CITY's breach of this Agreement; provided, however, CONTRACTOR shall not file or otherwise commence any action against CITY, in law or equity.

16. Actions for Damages. As a prerequisite to the filing and maintenance of any action for damages by CONTRACTOR against CITY arising out of this Agreement, CONTRACTOR shall present a claim to CITY, as required by Government Code Section 910 et seq., within 30 days of the date of the occurrence giving rise to the claim for damages. CONTRACTOR shall have no right to assert a claim for damages related to CITY's failure to approve or delay in considering a rate adjustment. In such cases, CONTRACTOR may file a petition for writ of mandate. CITY retains full rights to seek damages and/or injunctive relief.

17. Acknowledgement. It is acknowledged that each Party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that an Agreement will be interpreted strictly against the party preparing the same will not apply due to the joint contributions of both Parties.

18. Independent Contractor. In the performance of services pursuant to this Agreement, CONTRACTOR is an independent contractor and not an officer, agent, servant or employee of CITY. CONTRACTOR will have exclusive control of the details of the services and work performed and over all persons performing such services and work. CONTRACTOR is solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors or subcontractors will obtain any right to retirement benefits, Workers Compensation benefits, or any other benefits which accrued to CITY employees and CONTRACTOR expressly waives any claim to such benefits.

19. Subcontractors. CONTRACTOR will require all subcontractors performing work in the CITY to enter into an agreement in which agreement the subcontractor agrees that CONTRACTOR and subcontractor are independent contractors and have no other agency relationship with CITY.

20. Choice of Law. The law of the State of California governs the rights, obligations, duties, and liabilities of CITY and CONTRACTOR under this Agreement and govern the interpretation of this Agreement.

21. Consent to Jurisdiction. The Parties agree that any litigation between CITY and CONTRACTOR concerning or arising out of this Agreement must be filed and maintained exclusively in the Superior Courts of Merced County, State of California, or in the United States District Court for the Eastern District of California to the fullest extent permissible by law. CONTRACTOR hereby waives any right to remove any such action from Merced County as is otherwise allowed by California Code of Civil Procedure section 394. Each Party consents to service of process in any manner authorized by California law.

22. Assignment. CONTRACTOR may not assign its rights or delegate its responsibilities under this Agreement without advance written consent of CITY, which consent may be withheld for any reason.

23. No Continuation Rights. Notwithstanding any other provision of this Agreement,

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Draft Franchise Agreement

CONTRACTOR's rights to collect and transport Solid Waste shall be non-exclusive to the extent that third-party solid waste haulers have continuation rights pursuant to Public Resources Code Section 49520. Territory which is annexed to the CITY and included within the Service Area in CITY's sole discretion and for which an existing solid waste or construction debris collection and disposal franchise, agreement, license, or permit was granted by another public entity may continue to be served pursuant to such franchise, agreement, license subject to the provisions of Public Resources Code Section 49520 *et seq.*, and the provisions of this Agreement. CITY shall provide any solid waste hauler with continuation rights in an annexed area with notice of termination pursuant to Public Resources Code Section 49520 *et seq.* within six months of annexation to the Service Area of the territory in which the solid waste hauler has been operating. **CONTRACTOR understands and agrees that this Agreement is an exclusive contract within the meaning of Public Resources Code Section 49520. As such, CONTRACTOR shall not be entitled to continuation rights at the termination or expiration of this Agreement.**

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

As to the CITY: City of Atwater Public Works Attn: Justin Vinson 470 Aviator Dr Atwater, CA 95301 209-357-6370	As to CONTRACTOR: [Contractor Name Here] Attn: [Contractor Address Here] [Contractor Telephone Here]
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Notices will be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice. Facsimile or e-mail transmission is acceptable notice, effective when received, however, facsimile transmissions received (i.e. printed) or mail transmissions received after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of items that are transmitted by facsimile equipment or by email must also be mailed as required herein. Notice by CITY to CONTRACTOR of a Collection or other Service Recipient problem or complaint may be given to CONTRACTOR orally by telephone at CONTRACTOR's local office with confirmation sent to CONTRACTOR through the Customer Service System by the end of the Work Day.

25. Entire Agreement. This Agreement and the attached Exhibit constitutes the entire Agreement and understanding between the Parties, and the Agreement will not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the Parties.

26. Severability. If any provision of this Agreement or the application of it to any person or situation is to any extent held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it is held invalid or unenforceable, will not be affected, will continue in full force and effect, and will be enforced to the fullest extent permitted by law.

27. Prior Agreements Superseded. This Agreement incorporates and includes all prior

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

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

29. Exhibits. Each Exhibit referred to in this Agreement forms an essential part of this Agreement. Each such Exhibit is a part of this Agreement and each is incorporated by this reference.

30. Attorney's Fees. In the event that litigation is brought by a party in connection with this Agreement, the prevailing party will be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies under this Agreement or the enforcement of any of the terms, conditions, or provisions of this Agreement.

31. Effective Date. This Agreement will become effective at such time as it is properly executed by CITY and CONTRACTOR and CONTRACTOR will begin Services under this Agreement as of July 1, 2023.

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

CITY OF ATWATER A General Law City  By: _____ Mike Nelson City Mayor	[CONTRACTOR NAME HERE]  By: _____ [Name] President
ATTEST:  By: _____ Kory Billings City Clerk	ATTEST:  By: _____ [Name] Vice President
ATTEST:  By: _____ Frank Splendorio City Attorney	ATTEST:  By: _____ [Name] Chief Financial Officer



**EXHIBIT 1**  
**ROLL-OFF CONTAINER SPECIFICATIONS**

[ADD CONTRACTOR ROLL-OFF CONTAINER SPECIFICATIONS HERE]

DRAFT

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Draft Franchise Agreement