FRANCHISE AGREEMENT FOR

SOLID WASTE AND YARD WASTE COLLECTION AND DISPOSAL SERVICES

Between

THE CITY OF OAKLAND

and

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

December 31, 1995

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INTEGRATED SOLID WASTE MANAGEMENT SERVICES

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FRANCHISE AGREEMENT FOR SOLID WASTE
AND YARD WASTE COLLECTION AND DISPOSAL SERVICES

This Franchise Agreement ("Agreement") by and between the City of Oakland, a municipal corporation, (the "City") and Waste Management of Alameda County, Inc., a California corporation (the "Contractor") is made and entered into as of the 1st day of December, 1995.

RECITALS

Whereas, on November 21, 1978 the City and Oakland Scavenger Company entered into a twenty-five (25) year exclusive franchise agreement for the collection, removal and disposal of refuse in the City of Oakland; and

Whereas, the City and Oakland Scavenger Company entered into an agreement for the emptying of street litter containers; and

Whereas, on February 1, 1993 the City and Oakland Scavenger Company entered into a five (5) year agreement for the collection, processing and marketing of residential recyclable materials; and

Whereas, on October 21, 1993 Oakland Scavenger Company changed its name to Waste Management of Alameda County, Inc. and continues to provide refuse and residential recycling service in the City of Oakland; and

Whereas, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, ("AB 939") Division 30 of the California Public Resources Code, commencing with Section 40000, declares that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

Whereas, AB 939 requires California cities to reduce waste disposal by 25% by 1995 and 50% by 2000; and

Whereas, the City intends to comply with the requirements of AB 939 for the diversion of waste from landfill disposal, and to effectuate the City's own waste reduction strategy; and

Whereas, the City wishes to maximize cost effective waste reduction, recycling and composting both in order to comply with AB 939 and to promote resource conservation; and

Whereas, Yard Waste represents a large potential contribution to waste diversion in the City if it is separated from Solid Waste and diverted from disposal; and

Whereas, the City wishes to provide for sanitary, efficient and cost-effective Solid Waste and Yard Waste collection and disposal services within its jurisdiction; and

Whereas, the public health, safety and welfare in the City require that the collection, transportation over City streets, and ultimate disposition of Solid Waste, Yard Waste and components thereof, be closely regulated and monitored by the City; and

Whereas, the most efficient and effective means of providing Yard Waste collection services in the City is through an exclusive franchise with the provider of Solid Waste collection services for the City; and

Whereas, the City Council of the City of Oakland has determined that it is necessary to enter into an exclusive franchise in order to provide Solid Waste and Yard Waste collection and disposal services while maintaining the necessary controls over such factors as charges and fees, frequency and means of collection, use of City streets for transport and performance of recycling and composting services; and

Whereas, the City has the right under its police power to make provisions for Solid Waste handling, collection and disposal in a manner that the governing body deems appropriate, including the award, without competitive bidding, of partially or wholly exclusive franchises; and

Whereas, the City has the authority, pursuant to City Charter Section 1000, to grant or issue franchises for the transaction of business, providing of services or for the use of public streets or other public places, and to assess fees or other compensation to be paid therefor and the penalties for violations thereof; and

Whereas, Public Resources Code sections 40059 and 49300 currently state that the local governing body has the authority to make provisions for solid waste handling, collection and disposal in a manner that the governing body deems appropriate, including the award, without competitive bidding, of partially or wholly exclusive franchises by resolution or ordinance; and

Whereas, Contractor has represented and warranted to the City that it has the experience, responsibility, and qualifications to conduct Yard Waste programs and to arrange with residents and other entities in the City for (i) the collection, safe transport, processing and sale of Yard Waste, and (ii) the collection, safe transport, processing and safe disposal of Solid Waste (knowing that some of the aforementioned materials may inadvertently contain hazardous materials), the City Council determines and finds that the public interest, health, safety and welfare would be best served if Contractor were to make

arrangements with residents and other entities to perform these services; and

Whereas, City and Contractor have agreed to terminate the Franchise Agreement dated November 21, 1978 and the Street Litter Container Agreement and enter into this new Agreement in order to meet the AB 939 goals and provide expanded and more cost effective Solid Waste handling services.

NOW, THEREFORE, for the reasons stated above and in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the City and Contractor agree as follows:

ARTICLE 1.00 -- DEFINITIONS

Capitalized terms used in this Agreement have the meanings specified below for the purposes of this Agreement,including all exhibits, unless the context clearly provides otherwise:

1.1 AB 939. The California Integrated Waste Management Act (Public Resources Code Sections 40000 et seq.), as amended, including rules and regulations promulgated thereunder as amended, which among other things, requires each city and county to divert twenty-five percent (25%) of its waste stream from landfill disposal by December 31, 1995, and to divert fifty

percent (50%) of its waste stream from landfill disposal by December 31, 2000.

1.2 Agreement. This Franchise Agreement between City and Contractor for the provision of Solid Waste and Yard Waste collection and disposal services, including all exhibits, and any amendments hereto.

1.3 Alternative Security. Security other than a Performance Bond provided to the City by Contractor to assure Contractor's performance under this Agreement, in accordance with the provisions of Section 11.1.

1.4 Base Component. That portion of the Disposal Costs which represents Contractor's capital and operating costs, general and administrative costs for disposal of Solid Waste at the Disposal Facility. These costs, as of July 1995, are shown on Exhibit C.

1.5 Bulky Goods. Discarded materials such as, but not limited to, stoves, refrigerators, hot water heaters, washing machines, other White Goods, large and small household appliances, furniture, carpets, tires, mattresses, clothing, oversized Yard Waste, such as tree trunks and large branches, and other similar waste materials with weights or volumes greater

than those allowed in waste collection bins or other containers, excluding Construction Debris.

1.6 Business. Of or pertaining to a commercial establishment and/or industrial facility including, but not limited to, governmental, religious, and educational facilities.

1.7 City. The City of Oakland, a municipal corporation, including any subsequently annexed geographic portions thereof.

1.8 City Council. The governing legislative body of the City.

1.9 City Facilities. List of City-owned or operated sites and facilities, as it may be amended from time to time, attached as Exhibit D to this Agreement.

1.10 City Legislation. Any code, ordinance, resolution, motion or any other formal enactment of the City Council which now exists or which may hereafter be adopted which constitutes law or regulation governing the operation of the Contractor.

1.11 City Representative. The City Manager shall be the City's Representative. The City Manager may designate one or more City employees to act as his/her representatives to the Contractor regarding the requirements of this Agreement, and

shall notify Contractor of the scope of his/her representatives' authority to act in regards to those matters.

1.12 Construction Debris. Waste building materials resulting from construction, remodelling, repair or demolition operations.

1.13 Consumer Price Index or Index. The San Francisco/Oakland/San Jose Metropolitan Area Consumer Price Index (Urban Wage Earners and Clerical Workers, 1982-84=100) compiled and published by the United States Department of Labor, Bureau of Labor Statistics, or successor thereto. If the Consumer Price Index ceases to be published, and there is no successor thereto, such other index as City and Contractor shall agree upon in writing shall be substituted for the Consumer Price Index. The Index as of January 1995 is 148.2.

1.14 Contractor. Waste Management of Alameda County, Inc., a corporation organized under the laws of the State of California.

1.15 Customer. A generator of Solid Waste and Yard Waste within the City's jurisdiction including homeowners, owners of rental Single Family or Multifamily Dwellings, and Business owners or representatives.

1.16 Designated Waste. Those substances classified as designated waste by the State of California, presently in 23 California Code of Regulations Section 2522.

1.17 Disposal Facility. The sanitary landfill, or other solid waste disposal facility, utilized for the receipt and final disposition of some or all of the Solid Waste collected or accepted in accordance with this Agreement. Unless and until a change is approved by the City in accordance with Section 6.4, the Disposal Facility shall be Altamont, a Class II sanitary landfill owned by Contractor, located at 10840 Altamont Pass Road, in the unincorporated area of Alameda County.

1.18 Effective Date. Shall be December 1, 1995.

1.19 Fees Component. That portion of the Disposal Costs which consists of federal, state and local taxes and fees (other than income or franchises taxes or the like) imposed on the disposal of Solid Waste at the Disposal Facility. All such taxes and fees currently in effect, and their amounts as of July 1995, are shown on Exhibit C.

1.20 Force Majeure. Riots, wars, civil disturbances, insurrections, epidemics, hurricanes, earthquakes, floods, fire, acts of God, government orders and regulations, and other similar catastrophic events which are not the fault of and beyond the

reasonable control of the City or Contractor. Labor unrest, including but not limited to strikes, work stoppages or slowdowns, sickouts, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor shall also constitute events of force majeure.

1.21 Hazardous Waste. For purposes of this Agreement, Hazardous Waste shall include those wastes defined as hazardous waste in Oakland Municipal Code Section 6-4.01 or as subsequently amended. Section 6-4.01 currently defines Hazardous Waste as any hazardous waste, material, substance or combination of materials which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or may pose a substantial present or potential risk to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed; and which requires special handling under any present or future federal, state or local law, excluding de minimis quantities of waste of a type and amount normally found in residential solid waste after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance

with Sections 41500 and 41802 of the California Public Resources Code.

"Hazardous Waste" shall include, but not be limited to: (i) substances that are toxic, corrosive, inflammable or ignitable; (ii) petroleum products, crude oil (or any fraction thereof) and their derivatives; (iii) explosives, asbestos, radioactive materials, toxic substances or related hazardous materials; and (iv) substances defined by applicable local, State or federal law as "hazardous substances," "hazardous materials," "reproductive toxins," or "toxic substances," including those so defined in any of the following statutes: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution Control Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. the (Clean Air Act); 42 U.S. Code Section 9601, et seq. (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code Section 1801, et seq. (the Hazardous Materials Transportation Act); California Health & Safety Code Section 25100, et seq. (Hazardous Waste Control); Section 25300, et seq. (the Hazardous Substance Account Act); California Water Code Section 13000, et seq. (the Porter-Cologne Water Quality Control Act); the regulations

adopted and promulgated pursuant to such statutes, and any regulations adopted pursuant to these statutes after the date of this Agreement, as well as any subsequently enacted federal or California statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air, surface waters, groundwater, soil or other media contaminated with such substances.

The parties intend that this definition not be limited to any particular statutory or regulatory regime and that it be construed as broadly as possible so that Contractor bears the responsibility for exercising due diligence as provided in Article 5.00 of this Agreement in the investigation, monitoring, control, decontamination, removal, transportation, remediation, and/or safe disposal of Hazardous Waste as appropriate and as required in order to protect against actual or potential risk to public health and safety or the environment.

1.22 Local Emergency. The proclamation by the City Council, or by an official so designated by the City Council, of the existence of conditions of disaster or of extreme peril to the safety of persons and property within the City which are likely to be beyond control of the services, personnel,

equipment, and facilities of the City and require the combined forces of other political subdivisions to combat.

1.23 Material Recovery Facility. Any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Recyclables and returning them to the economy.

1.24 Medical Waste. Those materials defined in Health and Safety Code Section 25023.2 not including waste identified as not being medical wastes in Sections 25023.5 and 25023.8.

1.25 Multifamily Dwelling. Any residential structure with five or more living units and/or any residential structure which uses bin service for Solid Waste collection.

1.26 Oakland Municipal Code. The Municipal Code of the City of Oakland, as it may be amended or recodified from time to time.

1.27 Overage. An amount of Solid Waste in excess of the capacity of the containers for which a Customer has subscribed.

1.28 Performance Bond. The surety bond described in Section 11.1 of this Agreement.

1.29 Performance Standards. The standards for Contractor's provision of services and performance of other obligations hereunder, attached to this Agreement as Exhibit A.

1.30 Person. An individual, association, partnership, corporation, joint venture, the United States, the State of California, any municipality or other political subdivision thereof, or any other entity whatsoever.

1.31 Premises. Any land or building in the City where Solid Waste, Yard Waste or Recyclables are generated or accumulated.

1.32 Processing Facility. A facility which has adequate capacity for the receipt, sorting, storage and processing (including without limitation grinding, chipping, screening, preparation for and performance of composting) of Yard Waste materials and Recyclables so that they may be further processed or sold to end-use markets. Unless and until a change is approved by the City in accordance with Section 6.4, the Processing Facility for Yard Waste shall be located at the Transfer Station.

1.33 Rates. The unit rates to be charged to Customers by Contractor for providing Solid Waste and Yard Waste collection and disposal services to Customers, as set forth in Exhibit B, and as they may be adjusted from time to time in accordance with this Agreement.

1.34 Recyclables. Non-hazardous residential, commercial or industrial materials or by-products which are set aside, handled, packaged or offered for collection in a manner different than Solid Waste, for the purpose of being reused or processed and then returned to the economic mainstream in the form of commodities, and includes Source Separated Materials and Organic Recyclable Materials as defined in the Oakland Municipal Code.

1.35 Recycling Agreements. Agreements between the City and California Waste Solutions Incorporated dated January 1, 1993 (Sector A); Karl's Recycling Service/Pacific Rim Recycling, a joint venture, dated January 1, 1993 (Sector B); and Oakland Scavenger Company (changed to Waste Management of Alameda County, Inc.) authorized by Resolution No. 69233 C.M.S. dated July 28, 1992 (Sectors C and D) for residential recycling services, as each may be modified or renewed.

1.36 Residue. Contaminant material, separated from recyclable materials or Yard Waste which cannot be recycled, composted, marketed or otherwise utilized, which shall be disposed of as Solid Waste, Medical Waste or Hazardous Waste, as appropriate.

1.37 Single Family Dwelling. Any residential structure which has four or fewer living units within it and/or those

residential structures which use can service for Solid Waste collection.

1.38 Solid Waste. All putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes as defined in California Public Resources Code Section 40191, as that section may be amended from time to time, but does not include Source Separated Recyclables, abandoned vehicles and parts thereof, Hazardous Waste or low-level radioactive waste, Medical Waste, Unacceptable Waste or Yard Waste. Notwithstanding this definition, Contractor shall accept Recyclables and Yard Waste if offered for disposal.

1.39 Source Separated. Recyclables that have been segregated from Solid Waste by or for the generator thereof on the Premises at which they were generated for handling in a manner different from that of Solid Waste.

1.40 Term. The term of this Agreement, which shall begin on the Effective Date and shall end at midnight on December 31, 2010.

1.41 Transfer Station. A facility utilized to receive Solid Waste, to temporarily store, separate, recover, convert or otherwise process the materials comprising the Solid Waste, and to transfer the Solid Waste to vehicles for transport to a Disposal Facility. Unless and until a change is approved by the City in accordance with Section 6.4, the Transfer Station shall be that facility owned by Contractor located at the Westerly terminus of Davis Street in San Leandro, California.

1.42 Transfer Vehicle. A tractor and trailer designed to haul a load of no less than twenty (20) tons of Solid Waste.

1.43 Unacceptable Waste. Any and all waste, including but not limited to Hazardous Waste and Medical Waste, the acceptance or handling of which would cause a violation of any permit condition or legal or regulatory requirement, substantial damage to Contractor's equipment or facilities, or present a substantial endangerment to the health or safety of the public or Contractor's employees; provided, that de minimis quantities or waste of a type and amount normally found in residential Solid Waste after implementation of programs for the safe collection,

recycling, treatment and disposal of household hazardous waste in compliance with Sections 41500 and 41802 of the California Public Resources Code shall not constitute Unacceptable Waste.

1.44 White Goods. Discarded enameled household appliances such as refrigerators, stoves, washers, water heaters and other similar discarded items.

1.45 Yard Waste. Prunings, brush, leaves, grass clippings and such other similar types of organic waste that may be specified by the City in its reasonable discretion. Untreated and unpainted wood which fits within the Yard Waste container is also Yard Waste.

ARTICLE 2.00 -- REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

Contractor hereby makes the following representations and warranties for the benefit of the City as of the date of this Agreement:

2.1 Duly Organized and Qualified to do Business. Contractor is duly organized and validly existing as a corporation in good standing under the laws of the State of California.

2.2 Corporate Authorization. Contractor has full legal right, power, and authority to execute, deliver, and perform this Agreement, and has duly authorized the execution and

delivery of this Agreement by all necessary and proper action by its Board of Directors, or by its shareholders, if necessary.

2.3 Agreement Duly Executed. The persons signing this Agreement on behalf of Contractor have been authorized by Contractor to do so, and this Agreement has been duly executed and delivered by Contractor in accordance with the authorization of its Board of Directors, or shareholders if necessary, and constitutes a legal, valid and binding obligation of Contractor enforceable against Contractor in accordance with its terms.

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 (i) conflicts with, violates or will result in a violation of any existing applicable law; (ii) 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 agreement or instrument to which Contractor is a party, or by which Contractor or any of Contractor's properties or assets is bound.

2.5 No Litigation. There is no action, suit, proceeding or, to the best of Contractor's knowledge,

investigation at law or 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 materially adversely affect Contractor's performance hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Contractor.

2.6 Financial Ability, Disclosures, No Material Change. Contractor has sufficient financial resources to perform all aspects of its obligations hereunder. Contractor has provided the City with audited financial statements for the period ending December 31, 1994 which present fairly, in accordance with generally accepted accounting principles, the financial condition of Contractor. There has been no material adverse change in Contractor's financial condition since the date of these financial statements.

2.7 Expertise. Contractor has the expertise, professional, and technical capability to perform all of its obligations under this Agreement.

2.8 Contractor's Investigation. Contractor has made an independent investigation (satisfactory to it) of the

conditions and circumstances surrounding the Agreement, its content and preparation, the work to be performed by Contractor under the Agreement, and warrants that the Agreement accurately and fairly represents the intentions of Contractor, and enters into this Agreement on the basis of that independent investigation.

2.9 Disposal Facility. Contractor owns the Disposal Facility. The Disposal Facility has been designed, constructed and maintained in accordance with the provisions of 23 California Code of Regulations, Sections 2510 et. seq. ("Subchapter 15"). The Disposal Facility has been issued all permits from federal, State, regional, county and local agencies necessary for the Disposal Facility to operate as a Class II Sanitary Landfill and the Disposal Facility is in compliance with all such permits, a list of which is attached as Exhibit N. Contractor is authorized to accept at Altamont, under its existing permits, and has sufficient remaining permitted disposal capacity, not committed to others by contract, to accept all Solid Waste delivered to it by or on behalf of the City for the Term of this Agreement.

2.10 Closure of Disposal Facility. The closure and post-closure maintenance plans required by 14 California Code of Regulations, Sections 18260 et. seq., have been submitted to and

approved by the State and local permit enforcement agencies having jurisdiction over the Disposal Facility. A list of the plans are attached to this Agreement as Exhibit R and incorporated by reference herein. Contractor has submitted evidence to the appropriate governing agencies of adequate provisions to finance the closure and post-closure maintenance of the Disposal Facility as required by 14 California Code of Regulations, Sections 18260 et. seq. and these arrangements have also been approved by the State and local permit enforcement agencies having jurisdiction of such matters. The mechanism which Contractor currently plans to utilize to meet the State requirements of financial assurance for closure is an irrevocable letter of credit #123684 issued by Bank of America and the mechanism Contractor currently plans to use to meet the State requirement of financial assurance for post-closure maintenance is an insurance policy issued by National Guaranty Insurance Company. Contractor may change either or both of these mechanisms to another legally authorized mechanism if the change is approved by the California Integrated Waste Management Board.

ARTICLE 3.00 -- TERM AND SCOPE OF FRANCHISE

3.1 Effective Date. The effective date of this Agreement shall be December 1, 1995.

3.2 Term. The term of this Agreement shall begin on the Effective Date and shall end at midnight on December 31, 2010.

3.3 Option to Extend Term. The City may extend the Term at its sole discretion for up to five (5) years under the then existing terms and conditions. The City shall give Contractor notice in writing of no less than eighteen (18) months of its intent to exercise its extension option. At the expiration of the Term, this Agreement may be continued on a month to month basis with the mutual consent of the City and Contractor for up to a maximum of twelve (12) months.

3.4 Conditions to Effectiveness of Agreement.

3.4.1 Obligation of City to Perform. The obligation of the City to perform under this Agreement is subject to the satisfaction on or before the Effective Date of each and every one of the conditions set forth below, each of which may be waived in whole or in part by the City.

3.4.1.1 Accuracy of Representation. The representations and warranties of Contractor made in Article 2.00 of this Agreement shall be true and correct on and as of the Effective Date.

3.4.1.2 Absence of Litigation. There shall be no litigation pending on the Effective Date in any court challenging the execution of this Agreement or seeking to restrain or enjoin its performance.

3.4.1.3 Furnishing of Bond (or Alternative Security) and Insurance. Contractor shall have furnished the Performance Bond or Alternative Security, required pursuant to Article 11.00 and in substantial conformance with Exhibit J, and the evidence of insurance policies required by Article 12.00, meeting all the requirements of this Agreement.

3.4.1.4 Effectiveness of City Approval. The approval of this Agreement by the City shall have become effective, pursuant to California law.

3.4.1.5 Implementation Plan. Contractor has submitted, no later than November 22, 1995, and the City has approved, a detailed implementation plan addressing the topics and providing the information required by Exhibit M. The City's approval of the implementation plan shall not be unreasonably withheld.

3.4.2 Obligation of Contractor to Perform. The obligation of Contractor to perform under this Agreement is subject to the satisfaction on or before the Effective Date of

both of the conditions set forth below, each of which may be waived in whole or in part by Contractor.

3.4.2.1 Absence of Litigation. There shall be no litigation pending on the Effective Date in any court challenging the execution of this Agreement, or seeking to enjoin its performance.

3.4.2.2 Effectiveness of City's Approval. The approval of this Agreement by the City shall have become effective, pursuant to California law.

3.4.3 Notice. If either party wishes to assert that a condition for its benefit has not been satisfied and has not been waived on the Effective Date, it must deliver written notice to that effect to the other party. If no such notice is received, the Agreement will become effective on the Effective Date and neither party may thereafter assert that a condition has not been satisfied or waived and that the Agreement is not effective. This paragraph is not intended to prevent the City from seeking to employ other remedies in the event a representation or warranty by Contractor made pursuant to Article 2.00 is later discovered not to be true and correct or to remedy a failure by Contractor to furnish the required insurance and bond.

3.5 Grant of Franchise. Subject to the requirements and conditions of this Agreement, the City hereby grants to Contractor the franchise, privilege and duty during the Term, and any extension thereof, (i) to engage in the business of collecting, transporting, processing and effecting the ultimate disposal of Solid Waste; (ii) to use the City streets for collection and transportation of all Solid Waste that is required to be accumulated and set out for collection by Businesses, City Facilities, Multifamily Dwellings and Single Family Dwellings in accordance with the Oakland Municipal Code, as amended from time to time, or which is otherwise legally set out for collection by Contractor; and (iii) to collect, transport, process and recycle all Yard Waste that is offered for collection by Single Family Dwellings and City Facilities in accordance with the Oakland Municipal Code, as amended from time to time, or which is otherwise legally set out for collection by Contractor.

3.6 Scope of Franchise. The franchise granted to Contractor in Section 3.5 shall be exclusive except as to the following categories of materials. The granting of this franchise shall not preclude the following from being delivered to and/or collected by third parties other than Contractor:

(a) Source Separated Recyclables, including but not limited to those collected by a Person under contract to the City and those collected through private arrangements between the generator and the collection company, which are recycled at a recycling facility that holds all applicable permits; provided, however, that (i) loads which consist of mixed paper and which contain more than ten percent (10%) by weight of non-recyclable materials shall not be considered Source Separated Recyclables, and (ii) loads which consist of commingled Recyclables other than mixed paper and which contain more than five percent (5%) by weight of non-recyclable materials shall not be considered Source Separated Recyclables;

(b) Construction Debris (i) removed from a Premises by a licensed contractor as an incidental part of a total construction, remodeling or demolition service offered by that contractor, rather than as a separately contracted or subcontracted hauling service using debris boxes or similar apparatus, or (ii) directly loaded onto a fixed body vehicle and hauled directly to

a transfer station or disposal facility that holds all applicable permits;

(c) lawn and garden trimmings (i) removed from a Premises by a contractor as an incidental part of a total gardening or landscaping service offered by that contractor, rather than as a separately contracted or subcontracted hauling service using debris boxes or similar apparatus, or (ii) directly loaded onto a fixed body vehicle and hauled directly to a transfer station or disposal facility that holds all applicable permits;

(d) animal waste and remains from slaughterhouses and butcher shops, or grease waste for use as tallow;

(e) by-products of sewage treatment, including sludge, grit and screenings;

(f) Solid Waste, Yard Waste or Recyclables collected and transported by City crews to the Disposal Facility, Material Recovery Facility, Processing Facility or Transfer Station;

(g) Solid Waste hauled directly to a Transfer Station or Disposal Facility by a Person who is also the generator of the Solid Waste; and

(h) Recyclables which are donated to a youth, civic or charitable organization.

This grant to Contractor of an exclusive franchise, right and privilege to collect, transport, process, or dispose of Solid Waste and Yard Waste shall be interpreted to be consistent with federal and state laws, now and during the Term. The scope of this exclusive franchise shall be limited by current and developing state and federal laws with regard to Solid Waste handling, exclusive franchise, control of Recyclables, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, or enactment of new laws limit the ability of the City to lawfully provide for the scope of franchise services as specifically set forth herein, Contractor agrees that the scope of the franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by Contractor to arise out of further limitations of the scope of the franchise as set forth herein. In such event, it shall be the responsibility of Contractor to minimize the financial impact to other services being provided as much as commercially feasible.

3.7 Acceptance of Franchise. Contractor hereby accepts the franchise on the terms and conditions set forth in this Agreement.

ARTICLE 4.00 -- SERVICES TO BE PERFORMED BY CONTRACTOR

4.1 General. Contractor shall perform Solid Waste and Yard Waste collection, processing and disposal services as described in this Agreement, including but not limited to paying the costs associated with obtaining and complying with all permits and approvals, landfill operations, closure and post-closure maintenance and remediation in consideration of the right to charge and collect the Rates in the amounts and on the terms set forth in this Agreement. Contractor shall provide all labor, materials, equipment, supplies, supervision and other items necessary for the performance of the services under this Agreement. The enumeration of, and specifications of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated or not. The work to be performed by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and Businesses within the City are provided reliable, courteous and high-quality Solid Waste and Yard Waste collection, processing

and disposal service at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided for in this Article, whether such other aspects are enumerated elsewhere in this Agreement or not. Contractor shall perform all work in accordance with Exhibit A, all provisions of which are incorporated herein whether or not such provisions are specifically referred to in any other section of this Agreement.

4.1.1 Transfer of Loads on Public Streets and Roads. Contractor is prohibited from transferring loads from one vehicle to another on any public thoroughfare unless there is a necessity to do so because of the mechanical failure or accidental damage to a vehicle.

4.2 Solid Waste Collection. Without limiting Contractor's obligations under this Agreement, Solid Waste collection services shall be performed by Contractor in accordance with the Performance Standards set forth in Exhibit A and at the Rates set forth in Exhibit B-1, as they may be amended.

4.2.1 Curbside Service. Contractor shall provide for the weekly curbside collection of Solid Waste from Single

Family Dwellings at the level of service subscribed (20 gallon mini-cans, 35, 64 or 96 gallon containers) plus Bag-Its.

4.2.2 Backyard Service. Contractor shall provide backyard Solid Waste collection service for (i) frail senior citizens and disabled individuals at no additional charge, in accordance with the requirements set forth in Exhibit S, and (ii) other customers paying an additional charge for backyard service. Contractor shall be responsible for determining who receives backyard service, subject to guidelines approved by the City.

4.2.3 Multifamily Dwelling Service. Contractor shall provide Solid Waste collection at least weekly for Multifamily Dwellings.

4.2.4 Business Service. Contractor shall provide Solid Waste collection from Businesses as scheduled with the business owner or representative, but at least weekly.

4.2.5 City Facilities. Contractor shall provide collection, without charge, of Solid Waste generated at City-owned or operated sites and facilities, a listing of which is set forth in Exhibit D, which list may be reasonably modified by notice provided to Contractor by the City. The City assures Contractor that during the Term, the City shall not add facilities owned and operated by the Oakland Unified School

District, the Oakland Housing Authority or the Port of Oakland to the list without approval of Contractor.

4.2.6 City Delivered Materials. Contractor shall accept dirt and debris, Solid Waste, White Goods, Yard Waste and Recyclables collected by City crews and delivered by City vehicles to the Disposal Facility, Transfer Station or Processing Facility. Contractor shall weigh City vehicles delivering materials to Contractor's facilities. The total tonnage of materials delivered by the City pursuant to this Section and Section 4.3.5 without charge shall not exceed 15,000 tons per calendar year. Separated Recyclable materials delivered by City crews to any of Contractor's facilities shall not be counted towards the tonnage allowance established pursuant to this Section. In January of each year, the City Representative and Contractor shall establish the rate per ton which the City must pay or be paid during the calendar year for the delivery of Recyclables to Contractor. The amount of tonnage allowed shall increase by three percent (3%) per year during the Term, with the first increase occurring on January 1, 1997. If the total tonnage of Sections 4.2.6 and 4.3.5 exceeds the maximum tonnage then allowed, the tonnage delivered in that year shall be added to the total tonnage for the preceding three (3) years and the

sum divided by four (4). If the resulting four (4) year average is less than the then allowed tonnage, there shall be no charge to the City. If the resulting four (4) year average exceeds the then allowed tonnage, the City shall pay Contractor for the disposal of the excess tonnage as follows: (i) if the excess tonnage is less than the total tonnage of Yard Waste delivered during the year in question, the City shall pay Contractor the gate rate at the Processing Facility for Yard Waste and (ii) if the excess tonnage exceeds the total tonnage of Yard Waste delivered during the year in question, the City shall pay the gate rate for Solid Waste for the portion of the total tonnage which exceeds the amount of Yard Waste delivered. The Rates charged for these services shall be those shown in Exhibit C, which will increase pursuant to Sections 15.3 and 15.4

4.2.6.1 Carry Forward of Excess Tonnage. In lieu of paying Contractor for the excess tonnage as calculated in Section 4.2.6, the City may choose to carry forward the excess amounts owed to the following two (2) calendar years, but may not extend beyond the Term of this Agreement. The calculated payment due for excess tonnage for the year in question, shall be debited against the total dollar value of the annual tonnage allocation for the following two (2) calendar years. If the City's

utilization is equal to or less than the total dollar value of the adjusted annual tonnage allocation over the two (2) year period, there shall be no charge to the City. If the City's utilization exceeds the dollar value of the annual tonnage allocation, the City shall pay Contractor the total dollar value of the excess payment balance as allowed by Section 4.2.6.

4.2.6.2 Calculation and Payment of Excess Tonnage Value. Contractor shall notify the City if it determines that the City has delivered materials to Contractor in excess of the maximum tonnage allowed pursuant to Section 4.2.6. Within thirty (30) days of such notice, Contractor and the City Representative shall review and calculate the value of the excess materials delivered, in accordance with the provisions of Section 4.2.6 and using the disposal fee components set forth in Exhibit C, as adjusted. The City shall pay Contractor for the value of the excess tonnage within thirty (30) days of the determination of value, unless the City at its option, chooses to carry forward the excess payment balance as allowed by Section 4.2.6.1.

4.2.7 Street Litter Container Service. Contractor shall provide, without charge, Solid Waste collection from City-owned street litter containers, a listing of which is set forth in Exhibit E, which list may be reasonably modified by notice

provided to Contractor by the City, on a collection cycle determined by the City. The initial list contains 689 locations and specifies the collection frequency. The City may add additional locations to the list between the Effective Date and December 31, 1995 up to a maximum of 750 locations and make reasonable changes in the service frequency. Contractor shall be obligated to provide collection services for up to 75 new containers added by the City during each calendar year commencing on January 1, 1996 during the Term according to the procedures set forth in Exhibit E. Contractor shall provide a label in three languages (English, Spanish, Chinese) to be affixed to the containers warning users against placing household or commercial Solid Waste in the container. The City will maintain and replace existing containers on an as needed basis and be responsible for the purchase of containers for new service locations. If requested by the City, Contractor shall purchase and provide street litter containers meeting the City's specifications. The City shall be responsible for receipt, storage and placement of the containers at new service locations. The City shall reimburse Contractor for any containers purchased within thirty (30) days of the submittal of an invoice to the City.

4.2.8 Neighborhood and Community Event Service. Contractor shall provide, without charge, delivery and pickup of one hundred and eight (108) 30-yard debris boxes, or the equivalent, for neighborhood and community events each calendar year as requested by the City Representative. Any unused portion of this allowance shall carry forward to succeeding calendar years, up to maximum of 216 30-yard debris boxes which must be provided in any one year.

4.2.9 Bulky Goods Service. Contractor shall provide Bulky Goods collection and processing in accordance with the Bulky Goods Program set forth in Exhibit F, including one Bulky Goods collection per year per residential account of one to four units. Contractor shall make a reasonable good faith effort to reuse Bulky Goods as is or disassemble Bulky Goods for reuse and recycling prior to transferring Bulky Goods to the Disposal Facility. Bulky Goods should be processed in a manner consistent with all local, state and federal regulations.

4.2.10 Holiday Trees. Contractor shall dispose of as Solid Waste, holiday trees which are not capable of being processed as Yard Waste (flocked, tinsel, etc.), according to a schedule to be mutually agreed upon with the City. Contractor shall be responsible for notifying Customers of the proper set

out requirements for holiday trees in accordance with the guidelines set forth in Exhibit G.

4.2.11 Transportation of Solid Waste. Contractor shall transport and deliver to the Transfer Station or Disposal Facility all Solid Waste that it collects under this Agreement. Contractor shall transport and deliver (or arrange for the transportation and delivery of) all Hazardous Waste, Designated Waste and other materials which are encountered at the Transfer Station or other facility owned by Contractor, and which cannot be either accepted at the Disposal Facility or recycled, to an appropriately permitted waste disposal facility. Contractor shall transport and deliver all materials which it does not believe can be recycled and which may be accepted at the Disposal Facility to the Disposal Facility on Transfer Vehicles. Contractor shall transport and deliver (or arrange for the transportation and delivery) of all materials received at the Transfer Station which it considers recyclable to a purchaser, or permitted Materials Recovery Facility, or end user who will use the materials in a process or product and will not dispose of them. No materials collected by Contractor may be disposed of at any location other than the Disposal Facility or (in the case of Hazardous Waste and Designated Waste) in other properly permitted

waste disposal facilities. Contractor shall use due care to prevent Solid Waste from being spilled or scattered during transportation to the Transfer Station or Disposal Facility. If any Solid Waste is spilled, Contractor shall immediately clean up all spilled materials.

4.2.12 Solid Waste Containers. Contractor shall provide, maintain and replace all containers and receptacles required for Solid Waste collection services; provided, however, that nothing in this subsection shall prohibit Contractor from pursuing claims for damaged or lost containers against Business Customers. For Single Family Dwellings, Contractor shall be obligated to replace, at its cost in 1996, no more than five percent (5%) of the total number of containers distributed at the commencement of the curbside Solid Waste collection program, nor more than two percent (2%) in any single year thereafter. Contractor may charge Customers, at cost, for replacement containers above these ceilings, or sell them to the City at cost. Contractor will notify the City if an individual Customer has required replacement of containers more than twice in a twelve (12) consecutive month period. The City and Contractor will consult with each other (and with the Customer if deemed appropriate) to develop an appropriate response to the situation.

4.2.13 Service Level. Contractor shall monitor the service level subscribed to by Business Customers, and, if and when it appears that the Customer has subscribed to container service less than the volume of Solid Waste actually produced by the Customer, provide notice to the Customer that a different level of service is either available or required, as applicable. After the Contractor has sent three (3) letters to a Customer over a three (3) month period to inform the Customer that an increased level of service is required, Contractor shall notify the City. The City shall send a letter to the Business Customer informing the party of a possible violation of Sections 6-4.11 and 6-4.12 of the Oakland Municipal Code.

4.3 Yard Waste Collection. Contractor shall be responsible for ensuring that Yard Waste collected pursuant to this Section shall be kept separate from Solid Waste after collection. Contractor agrees that collected Yard Waste will be recycled through composting, mulching or applying directly to land. Contractor shall notify the City, and receive the City's consent, before using Yard Waste for alternative daily landfill cover, transformation, biomass fuel production or any other use which might result in the City's receiving less than full credit for such Yard Waste toward compliance with AB 939 waste diversion

goals. Contractor shall not dispose as Solid Waste, any separately collected Yard Waste without prior written approval of the City. Without limiting Contractor's obligations under this Agreement, the Yard Waste collection services shall be performed by Contractor in accordance with the Performance Standards set forth in Exhibit A.

4.3.1 Curbside Service. Contractor shall provide for the bi-weekly curbside collection, transportation and processing of Yard Waste from Single Family Dwellings that does not exceed an amount which can be placed in a container with a capacity of up to 64 gallons. The City may direct Contractor to pick up Yard Waste on a schedule less frequently than bi-weekly, however, Contractor is only obligated to pick up (in addition to Solid Waste) either Recyclables or Yard Waste each week in recycling sectors C and D. Contractor shall pick up Yard Waste in recycling sectors A and B bi-weekly unless directed by City to pick up on a less frequent schedule.

4.3.2 Backyard Service. Contractor shall provide backyard Yard Waste collection service for (i) frail senior citizens and disabled individuals at no additional charge, in accordance with the requirements set forth in Exhibit S, and (ii) other customers paying an additional charge for backyard service.

Contractor shall be responsible for determining who receives backyard service, subject to guidelines approved by the City.

4.3.3 City Facilities. Contractor shall provide collection, transportation and processing, without charge, of Yard Waste generated at City-owned or City-operated sites and facilities, including without limitation, City parks, a listing of which is set forth in Exhibit D, which list may be reasonably modified by notice provided to Contractor by the City. The City assures Contractor that during the Term, the City shall not add facilities owned and operated by the Oakland Unified School District, the Oakland Housing Authority or the Port of Oakland to the list without approval of Contractor.

4.3.4 Transportation and Processing of Yard Waste. Contractor shall transport and deliver to the Processing Facility all Yard Waste collected pursuant to this Agreement. All Residue from the processing and composting of Yard Waste which cannot be recycled shall be transported and delivered to the Transfer Station or the Disposal Facility or, if necessary, to another properly permitted waste disposal facility.

4.3.5 City Delivered Materials. Contractor shall accept and process Yard Waste collected by City crews and delivered by City vehicles to the Processing Facility. The total

tonnage of materials to be processed and the Rates to be charged for processing in the calendar year shall be governed by Section 4.2.6, 4.2.6.1 and 4.2.6.2. If the City delivers Yard Waste which has already been chipped to the Processing Facility, such Yard Waste shall not be counted towards the total tonnage referenced in Section 4.2.6 which may be delivered to Contractor's facilities during the calendar year. In January of each year, the City Representative and Contractor shall establish the rate per ton which the City must pay or be paid during the calendar year for the delivery of chipped Yard Waste to the Processing Facility.

4.3.6 Holiday Trees. Contractor shall collect holiday trees as Yard Waste according to a schedule to be mutually agreed upon with the City. Contractor shall be responsible for notifying Customers of the proper set out requirements for holiday trees in accordance with the guidelines set forth in Exhibit G.

4.3.7 Yard Waste Containers. Contractor shall provide, maintain and replace all containers and receptacles required for Yard Waste collection services. The five percent (5%) and two percent (2%) annual limits and charging, at cost, above the limits in Section 4.2.12 shall apply separately to

Contractor's obligation to replace Yard Waste containers. Contractor will notify the City if an individual Customer has required replacement of containers more than twice in a twelve (12) consecutive month period. The City and Contractor will consult with each other (and with the Customer if deemed appropriate) to develop an appropriate response to the situation.

4.3.8 Public Education Materials. Contractor shall prepare public education materials to publicize the Yard Waste program. All materials are subject to the review and approval of the City in accordance with the guidelines set forth in Exhibit G. Contractor shall spend a minimum of Sixty-five Thousand Dollars ($65,000) on public education activities during the first full calendar year of this Agreement and Thirty-five Thousand Dollars ($35,000) per year in each subsequent year, the latter amount to be increased by the same percentage, if any, that Rates are increased pursuant to Section 15.3.

4.4 Solid Waste Disposal. Without limiting Contractor's obligations under this Agreement, Solid Waste disposal services shall be performed by Contractor at the Rates set forth in Exhibit B-1, as they may be amended.

4.4.1 Safe and Lawful Disposal. Contractor shall provide for the receipt, acceptance and safe and lawful disposal

of Solid Waste collected in the City as provided in this Agreement, and Recyclables and Yard Waste if offered by Customers for disposal.

4.4.2 City Delivered Materials. Contractor shall dispose of dirt and debris, White Goods and Solid Waste, including Yard Waste and Recyclables if offered for disposal as Solid Waste, which are collected by City crews and delivered by City vehicles to the Disposal Facility or the Transfer Station. Contractor shall process Yard Waste collected by City crews and delivered by City vehicles to the Processing Facility. Payment to Contractor for disposal and processing under this Section shall be in accordance with the provisions set forth in Sections 4.2.6, 4.2.6.1, 4.2.6.2 and 4.3.5.

4.5 Other Services; Specialized Services. Contractor currently provides other Solid Waste and Yard Waste collection services for Customers not required by Sections 4.2 through 4.4, such as debris box drop off and pick up, collection and disposal of Bulky Waste at times other than the scheduled Bulky Waste collections provided for in Section 4.2.9. To the extent such special Solid Waste and Yard Waste services are within the scope of the Contractor's exclusive franchise under this Agreement, the additional charge to the Customer for such services (1) shall be

determined between Contractor and Customer prior to provision of the services, (2) shall be established by reference to the Rate(s) for the most similar types of services covered in the then-existing Rate Ordinance, and (3) at the request of the Customer shall be subject to review and approval or adjustment by the City.

In addition, Contractor also currently provides waste handling services beyond the scope of both the exclusive Franchise and this Agreement generally. Examples of such specialized waste service include clean up and disposal of Hazardous Waste, collection and disposal of loads of waste which may not legally be disposed of at a Class 3 landfill, testing of waste, etc. This Agreement is not intended to affect Contractor's provision (or decision not to provide) such specialized services nor rates for such services.

4.6 Emergency Service. Contractor shall provide emergency services (i.e., special collections, transport, processing, disposal) at the City's request in the event of a declared local, State or federal state of emergency, major accidents, disruptions, or natural calamities. 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. An emergency number shall be accessible throughout the year, twenty-four (24) hours per day for the City representative to contact Contractor. Emergency services shall be provided at Contractor's customary rates then in effect per the Oakland Municipal Code, or the Gate Fees at the Transfer Station or Disposal Facility as shown in Exhibit C, as adjusted pursuant to Sections 15.3 and 15.4, whichever is applicable.

4.6.1 Request for Emergency Waiver. In the event of a Local Emergency, the City may request, and Contractor shall apply to the California Integrated Waste Management Board for, an emergency waiver to accept disaster related debris and other wastes, in excess of the amounts allowed by its Solid Waste Facility Permit for the Transfer Station, Processing Facility and Disposal Facility during the recovery phase of a Local Emergency.

4.7 Changes in Scope of Work.

4.7.1 General. City may direct changes in the scope of work, including the addition of new services and programs, the deletion of existing services, and the modification of the manner in which existing services are performed. Contractor shall promptly and cooperatively comply with such directions and the Rates shall be adjusted to fairly and fully

reflect the additional cost, or cost reduction, associated with the directed change in scope of services. The City's authority to delete existing services is not in derogation of Contractor's exclusive franchise rights, i.e., if a service within the scope of the franchise is discontinued at the City's election under this section, the City shall not allow a third party to perform it. If the City does delete such services, it will take into account in adjusting Rates not only Contractor's reduced operating costs, but also the impact of capital equipment no longer fully utilized, if Contractor provides financial information showing such impact. All sums which appear in this Section 4.7 are expressed in July 1995 dollars and will automatically be adjusted by changes in the Index from that date.

4.7.2 New Programs. Pilot programs and innovative services which may entail new collection methods or new requirements for waste generators are included among the kinds of changes City may direct. Before directing a change in service which would affect Contractor's costs by more than $500,000 per year, City will request Contractor to evaluate and report on the change being considered. Within ninety (90) days of receiving such a request, Contractor shall provide a report to City on the change, including (i) description of collection methodology to be

employed; (ii) equipment to be utilized, including the number and type of vehicles required and the number required to be purchased, if any; (iii) labor requirements (number of employees by classification); (iv) requirements for program publicity, customer education, etc., if any; (v) evaluation of financial implications of the program, including a 5-year projection of costs, revenues and affect on Rates, showing the assumptions used and explaining the basis for such assumptions; (vi) advantages and disadvantages of the change; and (vii) a recommendation as to whether the change should be implemented and, if so, an implementation schedule. Contractor will meet with City to present its report.

4.7.3 Implementing Changes in Service. If a change in service will affect Contractor's costs by less than $500,000 per year, Contractor shall implement the change in accordance with a schedule directed by the City. If a change in service will affect Contractor's costs by $500,000 or more per year, City will consider Contractor's report as provided under Section 4.7.2. If the parties agree on the appropriate amount by which Rates should be adjusted, Contractor shall implement the change in accordance with the schedule directed by City. If the parties have not agreed but the change will not require Contractor to

make a capital investment of more than $2.5 million, Contractor shall also implement the change, City shall adjust the Rates as it believes proper and Contractor may challenge the adequacy of such Rates as provided in Section 15.12. If the parties have not agreed and the change will require Contractor to make a capital investment of more than $2.5 million, then Contractor need not implement the change, but in such case City may engage another Person to do so and may modify the scope of work under this Agreement accordingly. If the scope of work is modified pursuant to this Section 4.7, the bonding and insurance requirements set forth in Articles 11.00 and 12.00 shall be reviewed for their sufficiency and purpose.

4.7.4 New Technology. In the event that technological advancements in the collection, transportation, processing, handling or disposal of Solid Waste and/or Yard Waste are made, and which if implemented alone or in conjunction with another technology would cumulatively reduce the existing cost to Contractor for providing services or reduce the initial Rates established by this Agreement by approximately ten percent (10%) or more, Contractor shall so notify the City, and the City may require Contractor to utilize or implement said new technology and new Rates shall be mutually agreed upon and established.

Contractor shall retain the ability to propose changes to the City in its Solid Waste and Yard Waste collection and disposal services for the purpose of maximizing efficiency. Said changes will not be implemented without the written approval of the City.

4.8 Ownership of Solid Waste and Yard Waste. Ownership and the right to possession of Solid Waste and Yard Waste placed in containers or bins or bundles for collection, or placed at curbside, shall transfer directly from the Customer to Contractor by operation of law. Contractor's arrangements with its Customers will provide that, subject to the right of the Customer to claim lost property, title and the right to possession, and liability for all Yard Waste and all Solid Waste, whether or not recyclable, which is set out for collection on the regularly scheduled collection day, or as a special collection, shall pass to Contractor at the time it is set out. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of or use the Solid Waste or Recyclables which it collects. Solid Waste which is disposed of at a Disposal Facility or Facilities (whether landfill, transformation facility, Transfer Station or Materials Recovery Facility) shall become the property of the owner or operator of

the Disposal Facility or Facilities once deposited there by Contractor. At no time does the City obtain any right of ownership or possession of Solid Waste placed for collection, and nothing in this Agreement shall be construed as giving rise to any inference that the City has any such rights, except as specified in Section 4.9.

4.9 City's Right to Acquire Ownership of Solid Waste and Yard Waste. At any time during the Term, upon ninety (90) days' prior written notice to Contractor, the City in its sole discretion may elect to acquire, and in such event may acquire, without charge ownership of all or selected portions of the Solid Waste or Yard Waste collected. Said notice shall only affect the ownership of Solid Waste or Yard Waste collected by Contractor after the effective date of the notice, shall not be applied retroactively and nothing in this Agreement shall be construed as giving rise to any inference that City has such ownership or possession unless such written notice has been given to Contractor. The City's right to direct collected Solid Waste and/or Yard Waste to an alternate destination shall be limited to reasons of maximum resource recovery and achievement of AB 939 goals. The City will only exercise its right in the event Contractor is unable to process the Solid Waste or Yard Waste in

a manner which would achieve similar results or cost efficiencies. The City shall not exercise its right to acquire ownership for the sole purpose of directing Solid Waste to another disposal facility.

ARTICLE 5.00 -- HAZARDOUS AND UNACCEPTABLE WASTE

5.1 Hazardous and Unacceptable Waste.

5.1.1 General. If Contractor, its employees, agents, or permitted subcontractors, observe any substances which they reasonably believe or suspect to contain Hazardous Waste anywhere within the City, including on, in, under or about City property, including streets, easements, rights of way and City Solid Waste or litter containers, or anywhere within, including on, in, under or about any of its properties, Contractor shall immediately notify the appropriate regulatory agencies and the City.

5.1.2 Notice to Customers. Contractor shall notify on an ongoing basis all Customers of (i) the prohibition against the set out and delivery of Hazardous Waste and Unacceptable Waste and (ii) the obligation of each Customer to provide for the proper handling and disposition of Hazardous Waste and Unacceptable Waste. Contractor shall refuse to collect or accept any Hazardous Waste or Unacceptable Waste. The Contractor shall

notify the Customer in writing why the collection was not made and to arrange for proper disposal. Contractor shall, prior to leaving the location, leave a tag at least 2"x6" which lists the telephone number for the Alameda County Household Hazardous Waste Program, including the reason for refusing to collect the waste.

5.1.3 Contractor to Segregate and Dispose. Contractor shall implement procedures to identify and reject waste materials delivered to its facilities which are Hazardous Waste, Designated Waste, Unacceptable Waste or which otherwise may not be legally accepted at its facilities under its existing permits and other applicable governmental regulations then in effect. Contractor shall segregate for disposition any Hazardous Waste or Unacceptable Waste which is identified after waste has been accepted or loaded, and shall not further process or transport such Hazardous Waste or Unacceptable Waste except to arrange for its transport and disposal to a properly permitted recycling, treatment or disposal facility of Contractor's choosing. Contractor shall be solely responsible for handling and arranging the transport and disposition of all Hazardous Waste and Unacceptable Waste that is collected or received by the Contractor and the costs associated therewith. Nothing in this Section prohibits Contractor from making every reasonable effort

to recover its special handling and disposal costs from the generator, and from the City if the City is the generator, of such Hazardous or Unacceptable Waste. Notwithstanding the foregoing, Contractor's recovery of such costs from the City is limited to costs specifically attributable to Hazardous or Unacceptable Waste generated by the City through its employees (acting within the ordinary course and scope of their employment), and Contractor waives any right to pursue a Claim against the City based on joint and several liability as to such Hazardous or Unacceptable Wastes.

5.1.4 Operating Procedures and Employee Training. Contractor shall establish, implement and maintain written operating procedures designed to insure Contractor's compliance with the provisions of this Article 5.00. Contractor shall establish, implement and maintain an employee training program and shall ensure that employees responsible for the identification, removal, handling, transport and disposal of Hazardous Waste, Designated Waste and Unacceptable Waste are at all times fully trained. Contractor shall maintain documentation which describes the training received by its employees.

5.2 Remediation of Spills. Contractor shall be solely responsible for any contamination existing at its facilities

before or after the date of this Agreement. No cost incurred as a result of such contamination shall be recoverable under this Agreement nor in separate administrative or judicial forums. Contractor shall diligently and regularly inspect its properties for Hazardous Waste and shall immediately remove and remediate any Hazardous Waste that it knows has been spilled or deposited at any location during the course of its operations. Contractor shall be responsible for remediation of its facilities and other locations impacted by spills or releases and the cost of remediation incurred as a consequence of such spills or releases shall not be recoverable under this Agreement. Nothing in this Section prohibits Contractor from making every reasonable effort to recover its special handling and disposal costs from the generator, and from the City if the City is the generator, of such Hazardous Waste. Notwithstanding the foregoing, Contractor's recovery of such costs from the City is limited to costs specifically attributable to Hazardous Waste or Unacceptable Waste generated by the City through its employees (acting within the ordinary course and scope of their employment), and Contractor waives any right to pursue a claim against the City based on joint and several liability as to such Hazardous or Unacceptable Wastes. Contractor acknowledges and

agrees that this Agreement does not provide the City, its agents, officers or employees with any control whatsoever over Contractor's compliance with environmental laws and regulations.

5.3 Record Keeping. Contractor shall create and maintain records which document and describe the amounts, nature, and disposition of all Hazardous Waste discovered, released, removed or remediated by Contractor in the course of performing this Agreement. All documentation required by this Article 5.00 shall be available for review by the City, and the City shall have the right to audit Contractor's implementation of all programs, procedures and training required under this Article. Contractor shall maintain Hazardous Waste records for fifty (50) years. Contractor may maintain such records in hard copy, on microfiche or by any other technologically acceptable method for record retention commonly available at the time.

5.4 Hazardous Waste Exclusion Program. During the Term, the City shall participate with appropriate regulatory and governmental agencies for the collection and proper disposal of household hazardous waste within the City, but nothing in this Agreement shall be construed as requiring the City to establish a specific program or to expend a specific amount of funds for such programs. The City shall take those measures reasonably

necessary in compliance with law to exclude household hazardous waste from Solid Waste to be disposed of under this Agreement as set forth in Exhibit L attached hereto and incorporated by reference herein. Contractor has established, and will implement, a Hazardous Waste Exclusion Program which is set forth in Exhibit L-1 attached hereto and incorporated by reference herein. Notwithstanding the efforts of the City and Contractor, the City makes no promise, and gives no guarantee, that Hazardous Wastes will not be delivered to the Disposal Facility.

ARTICLE 6.00 -- CONTRACTOR'S FACILITIES

6.1 Disposal Facility

6.1.1 Reservation of Disposal Capacity. Contractor shall reserve for and provide to the City permitted disposal capacity sufficient to dispose of all of the Solid Waste delivered to the Disposal Facility during the Term and any extensions thereof. Based upon information provided by Contractor of the current amount of Solid Waste collected in Oakland, which is disposed of at the Disposal Facility, and upon which information the City solely relies, Contractor shall reserve a minimum of 250,000 tons of disposal capacity for Solid Waste collected in Oakland during each year of the Term. Reservation of such disposal capacity by Contractor in no way

whatsoever obligates the City to utilize all such reserved capacity, nor to pay any money to Contractor, nor increase Rates, if such reserved capacity is not used during any annual period. Reservation of the established disposal capacity shall also not modify Contractor's obligation to provide any and all additional disposal capacity to meet its Solid Waste disposal duties and obligations to the City pursuant to this Agreement.

6.1.2 Alternative Disposal Facility. If Contractor becomes unable to perform its obligations at the Disposal Facility, including but not limited to accepting and disposing of Solid Waste collected in Oakland as required by this Agreement, as the result of causes beyond its control, that could not have been prevented by the exercise of due care, then Contractor shall notify the City immediately. Contractor shall immediately and diligently (i) accept and dispose of such Solid Waste at another disposal facility owned by it (or by another company which is owned and controlled, directly or indirectly, by Waste Management of California, Inc., and/or Waste Management, Inc.), or (ii) arrange for it to be accepted at another Disposal Facility not owned by it or an affiliated company, and (iii) exercise its best efforts to obtain or arrange for any necessary permits or licenses.

Contractor shall be entitled to an increase in Rates only if (1) the costs of disposal at the alternative disposal facility are higher than at the Disposal Facility, and (2) the inability to use the Disposal Facility is not due in any way to Contractor's negligence, breach of this Agreement or other fault. The City shall not be obligated to pay any additional transportation costs for use of an alternative disposal facility. Moreover, if the Rates would be increased as a result of the use of an alternative facility, the City may require Contractor to use a different disposal facility (including one not owned by it or an affiliate) if the cost of its use is lower. The foregoing principles shall apply to Sections 6.2 and 6.3.

6.1.3 Disposition of Unauthorized Waste. Contractor shall implement procedures to identify and reject waste materials delivered to the Disposal Facility which are Hazardous Wastes, Designated Wastes or which otherwise may not be legally accepted at the Disposal Facility under the Disposal Facility's permits and other applicable governmental regulations then in effect. Contractor shall implement such procedures in a uniform and non-discriminatory manner as applied to waste materials delivered to the Disposal Facility attributable to Oakland and from all other sources. Contractor may, in the

course of implementing such procedures, refuse to accept waste materials proposed to be deposited which are attributable to Oakland if they constitute Hazardous Waste, or otherwise may not be legally accepted at the Disposal Facility and shall be solely responsible for material which is accepted. If Contractor discovers such wastes among materials which it has accepted, it shall dispose of such wastes at its own expense. Contractor may pursue all legal rights and remedies it may have against the generator(s) of such waste if the generators can be identified.

6.1.4 Days and Hours of Operation. Contractor shall operate the Disposal Facility for the receipt and disposal of Solid Wastes subject to conditions in its permits restricting operating hours, and other legal constraints. In the event of a Local Emergency, Contractor shall, if requested by the City, attempt to obtain modifications to permit conditions restricting operating hours and to remove other legal constraints on receipt of Solid Waste outside of the permitted hours for the duration of the Emergency.

6.1.5 Weighing. Contractor shall maintain an adequate scale system at the Disposal Facility. All scales and weighing equipment shall be kept in good and accurate condition operating at the standards of accuracy and reliability sufficient

to provide information to the City in compliance with AB 939 reporting requirements. In the ordinary course, Contractor shall determine the amount of Solid Waste delivered to the Disposal Facility by reliance upon the records as to the weight of the vehicle and its contents recorded at the Transfer Station prior to its departure to the Disposal Facility. All vehicles of Contractor delivering Solid Waste to the Disposal Facility shall be weighed, and their weights recorded, if and when necessary to accurately measure tons of Solid Waste delivered. In the case of City vehicles delivering Solid Waste to the Disposal Facility which are required to be weighed, Contractor shall apply the volume to weight conversion factors set forth in Exhibit O, attached hereto and incorporated by reference herein.

6.2 Transfer Station. Contractor owns the Transfer Station. If Contractor becomes unable to perform its obligations at the Transfer Station, as required by this Agreement, as the result of causes beyond its control, that could not have been prevented by the exercise of due care, then Contractor shall notify the City immediately. Contractor shall immediately and diligently exert its best efforts to transfer Solid Waste in any lawful manner to properly permitted facilities (whether owned by

it or not) and to obtain or arrange for any permits or licenses needed.

6.2.1 Weighing. Contractor shall operate and maintain an adequate scale system at the Transfer Station. All scales and weighing equipment shall be kept in good and accurate condition operating at the standards of accuracy and reliability sufficient to provide information to the City in compliance with AB 939 reporting requirements. All vehicles of Contractor and the City delivering Solid Waste to the Transfer Station shall be weighed, and their weights recorded, so as to accurately measure tons of Solid Waste delivered. If the scales and weighing equipment at the Transfer Station are out of service, Contractor shall determine the amount of Solid Waste delivered to the Transfer Station by utilizing the arithmetic average of that vehicle's recorded tons of Solid Waste delivered on its immediately preceding three (3) deliveries to the Transfer Station. In the case of City vehicles delivering Solid Waste to the Transfer Station which are required to be weighed, Contractor shall apply the volume to weight conversion factors set forth in Exhibit O, attached hereto and incorporated by reference herein. Contractor shall conduct additional weighing to calculate the amount of Solid Waste diverted at the Transfer Station and to

allocate to the City its proportionate share of the diverted tonnage for AB 939 reporting.

6.2.2 Days and Hours of Operation. Contractor shall operate the Transfer Station from 7:00 a.m. to 5:00 p.m. seven days per week. The Transfer Station may be closed only on the following holidays:

New Year's Day	Easter Sunday	Fourth of July
Labor Day	Thanksgiving Day	Christmas Day

Subject to conditions in its permits restricting operating hours, and other legal constraints, Contractor shall reasonably receive deliveries at other times. In the event of a Local Emergency, Contractor shall, if requested by the City, attempt to obtain modifications to permit conditions restricting operating hours and to remove other legal constraints on receipt of Solid Waste outside of the hours shown above for the duration of the Emergency.

6.3 Processing Facilities. Contractor owns the Processing Facilities for Yard Waste and Recyclables. If Contractor becomes unable to perform its obligations at the Processing Facility, as required by this Agreement, as the result of causes beyond its control, that could not have been prevented by the exercise of due care, then Contractor shall notify the

City immediately. Contractor shall immediately and diligently exert its best efforts to transfer Yard Waste and Recyclables in any lawful manner to properly permitted facilities (whether owned by it or not) and to obtain or arrange for any permits or licenses needed.

6.3.1 Weighing. Contractor shall operate and maintain an adequate scale system at the Processing Facilities in accordance with the procedures set forth in Section 6.2.1.

6.4 Voluntary Change in Facility. If during the Term Contractor elects to change the location of the Disposal Facility, Material Recovery Facility, Processing Facility or Transfer Station, Contractor shall notify the City in writing as to the proposed location of the new facility and the effective date of Contractor's intended use of the facility. Any new facility to be used by Contractor to fulfill its obligations pursuant to this Agreement shall be located in an area zoned for the type of activity to be conducted at the facility. Contractor shall be responsible to acquire all necessary permits and environmental review and clearance. This Agreement does not authorize or waive any permit requirements. Contractor shall not be entitled to additional compensation from the City, or request a change in the Rates, as a result of Contractor's decision to

use another facility to fulfill its obligations pursuant to this Agreement, except as explicitly stated in Section 6.1.2, 6.2 and 6.3. Notwithstanding the above, the City shall not unreasonably refuse a request for change in facility location made by Contractor.

ARTICLE 7.00 -- COMPLIANCE WITH LAW AND PERMITS

7.1 Compliance with Law. Contractor shall comply, at its sole expense, fully and faithfully with all local, state and federal laws, ordinances, regulations and permit requirements, including City Legislation, as they may be amended from time to time, applicable to its performance under this Agreement, or in any way related to Contractor's performance of the services required under this Agreement; including, but not limited to, local, state and federal laws, ordinances and regulations relating to protection of the public's health, safety and welfare or contamination of the environment specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sections 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Sections 6901 et seq., the California Integrated Waste Management Act of 1989, and all other applicable laws of the State of California, the County of Alameda,

ordinances of the City, the requirements of Local Enforcement Agencies and other agencies with jurisdiction. Without limiting the generality of the foregoing, Contractor shall, at its sole expense, prepare and complete, or arrange for the preparation and completion of, any environmental impact report or other environmental review required under applicable local, state and federal law for the construction, modification or operation of physical plants, if any, necessary to perform the services described in this Agreement.

7.2 Permits, Authorizations, Licenses. Contractor shall obtain, and shall maintain throughout the term of this Agreement, at Contractor's sole expense, in addition to the permits required pursuant to Section 7.3, all other necessary permits, licenses, inspections and approvals required for Contractor to perform all the work and services agreed to be performed by Contractor pursuant to this Agreement. Contractor shall show proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses or approvals upon the request of the City.

7.3 Permits for Use of Facilities. Contractor shall keep in force and comply with the terms and conditions of all existing permits and approvals from governmental authorities

necessary for the use of the Disposal Facility, Material Recovery Facility, Processing Facilities and Transfer Station (collectively "Facilities") throughout the Term to adequately dispose and process all Solid Waste and Yard Waste delivered to the Facilities pursuant to this Agreement. Contractor shall keep the City fully informed of its progress in securing renewals of all such permits which occur during the Term and which may affect the ability of Contractor to perform pursuant to this Agreement. Upon request, Contractor shall provide the City with copies of all relevant correspondence with permitting agencies and all other relevant material correspondence related to the permitting process with third parties, but not including internal memoranda or correspondence between Contractor and its agents, consultants or attorneys. Upon request, Contractor shall also provide the City with a status report on applications for renewals of existing permits or any new permits which may be required to continue operations at the Facilities within existing permitted areas. Contractor shall give the City immediate notice of any proposed amendment to or alteration of such permits, or any new permits which may be required. Contractor shall use all reasonable efforts to resist any amendments or alterations to permits, the terms of which would prevent or materially interfere

with the performance of its obligations under this Agreement, through all available administrative procedures. In the event that such permit amendments occur despite Contractor's reasonable efforts to resist them, Contractor shall not be in breach of this Agreement if Contractor complies with such permit amendments provided the Contractor also complies with Section 6.1.2. A summary list of all current permits held by Contractor for operation of the Facilities, showing both the permit number and date of expiration, is attached to this Agreement as Exhibit N and incorporated by reference herein. A summary list of pending permits is attached to this Agreement as Exhibit N-1 and incorporated by reference herein. Contractor maintains that some of the foregoing information is confidential and proprietary and such Contractor designated information shall be subject to the disclosure restrictions of Sections 17.26.2, .3 and .4.

ARTICLE 8.00 -- CUSTOMER SERVICE

8.1 Scope of Services. Contractor shall provide the following Customer services:

(a) preparation, coordination with the City, and distribution of announcements for the start-up of Single Family Dwelling curbside Solid Waste and Yard Waste collection services. Contractor shall obtain written approval from the City prior to production of public education materials as delineated in Exhibit G. The City will respond within ten (10) working days of receipt of production copy(ies) of public education materials from Contractor;

(b) maintenance of a business office within the City limits with multi-lingual (at least English, Spanish, Chinese) capability and service hours from 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding federal holidays. Contractor shall maintain a Voicemail system (or its technological equivalent) for the Customer's use during non-regular service hours and respond to messages left on the system within one (1) working day of the message being left. Contractor must ensure that telephone

calls to it from locations within the City are billed as "local calls" by all telephone companies;

(c) appropriate notification of Customers and thirty (30) days notice to the City in advance of any scheduling change or material service change. Contractor will not permit any Customer to go more than seven (7) days without service in connection with a collection service schedule change;

(d) collection of missed collections within twenty-four (24) hours of notification to the Contractor by Customers and/or the City, unless Contractor and Customer mutually agree upon a different timeframe, with Contractor always striving to achieve said collection to the Customer's ultimate satisfaction;

(e) maintenance of records of all commendations, complaints, and notifications of missed collections, and Contractor's responses thereto. Contractor shall respond promptly to all Customer complaints and, when appropriate, document pertinent measures undertaken to resolve such complaints;

(f) community education and outreach services in accordance with the community education and outreach plan prepared

in accordance with Exhibit G and approved by the City under this Agreement; and

(g) such additional services as may be specified in plans submitted under this Agreement or in changes in the scope of work under this Agreement and agreed to in advance by both Contractor and the City.

8.2 Performance Reviews. Once a year, after thirty (30) days written notification to Contractor, the City may conduct a performance review, which may include a public hearing at which Contractor shall be present and participate, to review Contractor's performance and quality of service and to provide for evaluation of technological and regulatory changes and their effect on the services provided under this Agreement. The reports required by this Agreement, including but not limited to those regarding Customer complaints, may be utilized as a basis for review. If a review not involving a public hearing is conducted, Contractor shall be provided an opportunity to meet and confer with City staff. In addition, the City Manager may schedule a hearing at other reasonable times, particularly if imposition of liquidated damages is contemplated.

The provisions of this section are complementary and supplemental to, and in no way limit, the provisions of Article

16.00. Failure of the City to evaluate Contractor as set forth in this Section shall not affect the rights and obligations of the City or Contractor pursuant to the remainder of the Agreement.

8.3 Billing, Payment, and Payment Collection Services.

8.3.1 Billing. Contractor shall: (i) bill Customers for Solid Waste and Yard Waste collection, which includes a deadline date in a prominent space on the front of each billing sent, and that this date shall be in boldface type and in capital letters; (ii) collect payment for those services; (iii) maintain billing and payment records; and (iv) notify the City of delinquent accounts pursuant to the procedures described in Section 6-4.17 through Section 6-4.17.10 of the Oakland Municipal Code which may be amended or recodified from time to time by the City. City may direct Contractor to insert mailers (the format of which is mutually agreed upon by Contractor and the City) with billings relating to City-sponsored events and integrated waste management activities, to the extent that the agreed upon mailer format does not increase Contractor's normal postage cost for billing. If a postage increase is incurred for said mailing, the City will be responsible for the actual reasonable amount of the increase.

8.3.1.1 Payment Posting. All payments must be posted no later than the end of the next business day. In the event of a late or delinquent payment, Contractor shall use the following proof of timely payments when posting payments to a Customer account: (i) U.S. Postmark; (ii) cash register receipt issued by Contractor to Customers making payment in person on Contractor's office; (iii) certificate of mailing issued by the U.S. Post Office; (iv) certificate of registered or certified mail issued by the U.S. Post Office; or (v) receipt of delivery from private mail service. In the event that an invoice payment is received after the service period deadline, Contractor shall either (i) return payment to the Customer and notify, in writing, that said invoice is now due and payable to the City; or (ii) notify the Customer, in writing, that the payment received was applied to any current and/or future service charges, and that said invoice is now due and payable to the City.

8.3.1.2 Billing Errors. Identified billing errors must be corrected within two (2) business days and a revised bill must be sent to the Customer, upon their request, within three (3) business days thereafter. Contractor shall use the mailing address provided by the Customer. Contractor's records shall be matched with that of the Alameda County

Assessor's records if, and only if, the following occurs: (i) an invoice becomes delinquent; or (ii) mail was returned.

8.3.1.3 Telephone Customer Service. Contractor will provide to its Customers call completion and on-hold rates of service at or above the accepted industry standard at any given time. Contractor will provide bilingual customer service representatives (English, Spanish, Chinese) or will provide a way for the Customer to adequately communicate with Contractor.

8.3.1.4 Correspondence Customer Service. Contractor will respond promptly to all written correspondence from Customers.

8.3.1.5 Cashiering Operation. Contractor shall provide adequate staffing to assist Customers so as to not unduly inconvenience Customers making payment in person.

8.3.1.6 Administrative Hearing and Public Hearing Participation. Contractor shall designate a representative to attend administrative hearings and/or public hearings scheduled by the City to review delinquent charges for services rendered to the Customer by Contractor. Contractor's representative shall provide the account records for Customer and City review and be empowered to confirm, negotiate, amend or forgive the amount owed.

8.3.2 Billing Records. Contractor shall keep records of all billing documents and Customer account records, including but not limited to invoices, receipts and collection notices, for a period of three (3) years after the date of receipt or issuance. Contractor may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

8.3.3 Franchise Fee. In consideration of the special franchise right granted by the City to Contractor to transact business, provide services, use the public streets and/or other public places, and to operate a public utility for Solid Waste and Yard Waste collection services, Contractor shall remit monthly a franchise fee payment to the City. From the Effective Date of this Agreement through December 31, 1995, Contractor shall pay the City a franchise fee of six and one-half percent (6.5%) of gross revenues received (less City fees) from all Solid Waste, Yard Waste and franchised special services provided by Contractor, including revenues from sales of Bag-Its on or before the 20th day of the month after the Effective Date and each successive payment will be due on or before the 20th day of each succeeding month. For the period of January 1, 1996

through June 30, 1999, Contractor shall pay to the City a monthly franchise fee of $305,000 ($3,660,000 per annum). The payment for January 1996 will be due on or before the 20th day of February and each successive payment will be due on or before the 20th day of each succeeding month. Commencing July 1, 1999 the franchise fee required to be remitted pursuant to this section shall be increased by eighty percent (80%) of the change in the Index between January 1998 and January 1999. On July 1 of each subsequent year of the Term, the franchise fee, as adjusted as of July 1, 1999, shall be adjusted by eighty percent (80%) of the change in the Index between January of the year in which the fee is changed and the January of the immediately preceding year. The franchise fee payment for July 1999 shall be due on or before August 20, 1999 and each successive payment will be due on or before the 20th day of each succeeding month. If the franchise fee is not paid on or before the twentieth (20th) day of any month, Contractor shall pay to the City a late payment fee in an amount equal to one percent (1%) of the amount owing for that month. Contractor shall pay an additional one percent (1%) owing on any unpaid balance for each thirty (30) day period the franchise fee remains unpaid.

The City, at its sole discretion, may increase the franchise fee. Contractor shall collect and remit same to the City. In such event, the City shall be obligated to increase the Rates to generate a sufficient amount of revenue to cover the increased franchise fee owed to the City.

8.3.4 City Fees. From the Effective Date of this Agreement through December 31, 1995, Contractor shall pay City fees based upon the methodology for submitting City fees then in existence between the City and Contractor. For the period of January 1, 1996 through June 30, 1999, Contractor shall remit to the City a monthly payment of $1,041,000 ($12,492,000 per annum) for We Mean Clean, Household Hazardous Waste and recycling program activities. The payment for January 1996 will be due on or before the 20th day of February and each successive payment will be due on or before the 20th day of each succeeding month. Commencing July 1, 1999 the City fees required to be remitted pursuant to this Section shall be increased by eighty percent (80%) of the change in the Index between January 1998 and January 1999. On July 1 of each subsequent year of the Term, the City fee, as adjusted as of July 1, 1999, shall be adjusted by eighty percent (80%) of the change in the Index between January of the year in which the City fee is changed and January of the

immediately preceding year. The City fee payment for July 1999 shall be due on or before August 20, 1999 and each successive payment will be due on or before the 20th day of each succeeding month.

If the City fees are not paid on or before the twentieth (20th) day of any month, Contractor shall pay to the City a late payment fee in an amount equal to one percent (1%) of the amount owing for that month. Contractor shall pay an additional one percent (1%) owing on any unpaid balance for each thirty (30) day period the City fees remain unpaid.

The City, at its sole discretion, may increase City Fees. Contractor shall collect and remit same to the City. In such event, the City shall be obligated to increase the Rates to generate a sufficient amount of revenue to cover the increased City fees.

8.3.5 Monthly Collections Statement. On a monthly basis, Contractor shall provide the City with a statement of revenues collected during the preceding month and a breakdown of franchise fee and City fees being remitted. The monthly statement shall be submitted on the City approved form shown in Exhibit H. Said monthly statement shall be submitted to the City within twenty (20) days of the end of the calendar month in which

billing and collection service was provided, and shall accompany any other reports then due to the City.

8.3.6 City Access to Billing Information. Contractor shall provide City with prompt access to all current and up-to-date billing information necessary to allow the City to collect delinquent residential bills pursuant to the Municipal Code. In addition, Contractor will cooperate fully and actively with City staff to effectuate transfer of billing information to the City electronically no later than June 30, 1996.

ARTICLE 9.00 -- RECORD KEEPING, INSPECTIONS AND REPORTING

9.1 Financial Auditing. In addition to all other reports required under this Agreement, Contractor shall compile an annual financial report detailing revenues billed under this Agreement, outstanding accounts receivable, and franchise and other fees remitted to the City. Contractor's accounting records shall be maintained on a basis showing the results of Contractor's operations under this Agreement separately from operations in other locations, as if Contractor were an independent entity providing service only to the City. The financial report required by this Section shall be submitted not later than three (3) months following the end of Contractor's annual accounting period.

9.2 Record Keeping. In addition to other record keeping requirements, Contractor shall provide (i) collection and disposal records; (ii) character, weight and volume of Solid Waste, especially as related to reducing and diverting Solid Waste with information to be separated by kind of account; (iii) special cleanup event results; (iv) Yard Waste participation, especially as related to determining participation rates and implementing programs to increase existing participation and to expand diversion (names, addresses, contact made, etc.); and (v) any other records required by the terms of this Agreement. Contractor will, upon request, provide information to the City about costs and revenues attributable to various classes and categories of service in order to assist the City in evaluating and/or altering the structure of the Rates. In the event Contractor discontinues providing Solid Waste services to the City, Contractor shall provide all records of processing all Solid Waste collected in the City within thirty (30) days of discontinuing service.

9.3 Inspection of Facilities and Operational Records. The City shall have the right, but not the obligation, to observe and inspect all of Contractor's Facilities and operations under this Agreement. In connection therewith, the City shall

have the right to enter the Facilities upon reasonable notice to Contractor and during operating hours, speak to any of Contractor's employees and receive cooperation from such employees in response to inquiries. In addition, upon reasonable notice and without interference with Contractor's operations, the City may review and copy, at its expense, any of Contractor's operational records related to this Agreement. If the City so requests, Contractor shall make specified personnel available to accompany the City representatives on inspections.

9.4 Reporting. Contractor shall submit monthly, quarterly and annual reports to the City documenting the disposition of Solid Waste and Yard Waste and shall format such reports so that they may be used by the City for City's compliance with the reporting requirements of AB 939 or any other subsequently enacted federal, state or local law governing integrated waste management. Contractor shall format such reports in accordance with the then current requirements of the California Integrated Waste Management Board or other agency(ies) subsequently authorized to administer federal, state or local law governing integrated waste management. Exhibit H to this Agreement sets forth a report format which conforms to the current requirements. The City may update the report format

requirements from time to time and shall notify Contractor as provided for in Section 17.14 of this Agreement. Contractor shall be responsible for promptly updating this report format to insure the City's compliance with future requirements applicable to such reports. The City, in its reasonable discretion, may request additional information in, or modifications to the formatting of, such reports. All data generated for and contained in reports prepared under this Section shall be the property of the City.

ARTICLE 10.00 -- INDEPENDENT CONTRACTOR

10.1 Contractor An Independent Contractor. It is expressly agreed that in the performance of the services under this Agreement, the Contractor shall be, and is, an independent contractor, and is not an agent or employee of the City. Contractor has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely

responsible for Contractor's own acts and those of Contractor's subordinates and employees.

10.2 No Partnership or Joint Venture Created. Nothing in this Agreement shall be construed as creating a partnership or joint venture between the City and Contractor, or as giving the City a duty to supervise or control the acts or omissions of any person performing services or work under the Agreement.

10.3 No Entitlement to Benefits. Neither Contractor nor its officers, employees, agents, subagents, contractors or subcontractors shall be entitled to any retirement benefits, Workers' Compensation benefits, or any other benefits which accrue to any City employees, and Contractor expressly waives any claim it may have or acquire to such benefits.

ARTICLE 11.00 -- PERFORMANCE BOND

11.1 Performance Bond or Alternative Security. On or before the Effective Date, Contractor shall provide the City with a fully prepaid Performance Bond substantially in the form of Exhibit J, in the amount of Twenty-five Million Dollars ($25,000,000.00) payable to the City, executed as surety by a corporation authorized to issue surety bonds in the State of California, which corporation is acceptable to the City; and/or by providing as Alternative Security (i) a fully prepaid

irrevocable letter of credit in form and substance satisfactory to the City and issued by a financial institution acceptable to the City; (ii) a certificate of deposit in the name of the City with a financial institution acceptable to the City; or (iii) an alternate instrument securing Contractor's performance which is acceptable to the City at its sole discretion; provided that in all events the Performance Bond or Alternative Security, alone or in combination, secure an amount at least equal to the Contractor's cost to provide services for six (6) months. Such Performance Bond or Alternative Security shall be either (i) expressly provided for the full term of the Agreement, or (ii) provided for consecutive annual terms, in which case Contractor shall deliver to the City an annual Performance Bond or Alternative Security in a form acceptable to the City no less than sixty (60) days prior to the expiration of the preceding Performance Bond or Alternative Security. The City may require Contractor to increase the face amount of the Performance Bond or Alternative Security to maintain said Bond or Security in an amount at least equal to the Contractor's cost to provide services for six (6) months. Nothing in this subsection shall in any way obligate the City to accept a letter of credit,

certificate of deposit or other form of Alternative Security in lieu of the Performance Bond.

11.2 City's Right to Draw Against Performance Bond or Alternative Security. The City shall have the right to draw against the Performance Bond or, if applicable, the Alternative Security, for an event of default as set forth in Section 16.1 or Exhibit A-1 if Contractor has not cured the event of default after expiration of any applicable cure period. Without limiting the generality of the foregoing, the City may draw against the Performance Bond or Alternative Security in the event that Contractor's payment of franchise fees, City fees, or regulatory fees, or other payments required under this Agreement become more than thirty (30) days delinquent and Contractor has not cured the event of default after expiration of any applicable cure period.

11.3 Contractor's Obligation to Replenish Performance Bond or Alternative Security. Contractor covenants that it shall not dispute with its bonding company or the administrator of any Alternative Security the City's right to draw upon the Performance Bond or Alternative Security if Contractor's payments become more than thirty (30) days delinquent or if after reasonable notice, Contractor is assessed liquidated damages for acts or omissions set forth in Exhibit A-1 and Contractor has not

cured the event of default after expiration of any applicable cure period. Within five (5) working days of receipt of notice from the City, Contractor shall renew or replace such sums as needed to replenish the Performance Bond, or, if applicable, the Alternative Security.

11.4 Termination of Performance Bond or Alternative Security Obligation. Under no circumstances shall Contractor change, or allow the expiration of, the Performance Bond or Alternative Security provided under this Agreement without written notice to the City and written authorization from the City to allow such change or expiration. If Contractor shall fully perform the covenants, promises, undertakings and obligations contracted by Contractor to be performed under this Agreement, then the City shall not draw against the Performance Bond or Alternative Security. Contractor's obligation to maintain the Performance Bond, or Alternative Security, shall terminate and be cancelled upon the completion of all of Contractor's obligations under this Agreement including, without limitation, Contractor's payment of all franchise, City fees, or regulatory fees, or other applicable payments under Section 8.3. In the event of Contractor's default, the Performance Bond or Alternative Security shall remain in effect until the City or its

designated agent has completed all of Contractor's obligations under this Agreement. City shall execute and deliver to Contractor or Contractor's surety promptly upon the completion of all of Contractor's obligations under this Agreement, such certificates or other documents as either of them may reasonably request for the purpose of terminating and canceling the Performance Bond or Alternative Security. Absent such certificates or documents executed by the City, the Performance Bond or Alternative Security shall not be terminated or cancelled.

ARTICLE 12.00 -- INSURANCE

12.1 Contractor's Agreement to Provide Insurance. On or before the Effective Date, Contractor shall procure and keep in force for the Term, or as otherwise specified below, the insurance coverages set forth below, with insurers with a Best rating of "A", or better, and class eight (8) or larger and under forms of policies satisfactory in all respects to the City. Contractor shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this Article.

12.2 Comprehensive General Liability Insurance. Contractor, at its own expense, shall maintain Commercial General

Liability Insurance (or its equivalent), on an occurrence basis, including but not limited to, Personal Injury, Broad Form Property Damage, Contractual Liability and Products and Completed Operations Coverages. The policy shall be endorsed to include the following:

(a) All coverages shall be primary insurance with regard to the work performed hereunder and each policy shall be endorsed to waive subrogation against the City and all other additional insureds.

(b) Limits of liability:
$20,000,000 each occurrence, annual aggregate and $20,000,000 annual aggregate for products-completed operations.

(c) Contractor shall immediately notify the City when asserted Claims are greater than $10,000,000. If requested by the City, Contractor shall immediately purchase additional umbrella coverage to restore coverage limits specified above.

12.3 Automobile Liability Insurance. Contractor, at its own expense, shall maintain automobile liability insurance for the period covered by this Agreement, including any extensions thereto, in the amount of Ten Million Dollars

($10,000,000) per occurrence combined single limit coverage for personal and bodily injury and property damage. Such coverage shall include, but shall not be limited to, the use of owned, non-owned and hired vehicles and equipment used by Contractor in the performance of its activities contemplated under this Agreement.

12.4 Workers' Compensation Insurance. Contractor, at its own expense, shall carry and maintain full Workers' Compensation Insurance, as required by the California Labor Code, and Employer's Liability Insurance with limits not less than Two Million Dollars ($2,000,000) per accident. Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code. Contractor shall comply with the provisions of Section 3700 of the Labor Code before commencing the performance of the work under this Agreement.

12.5 Environmental Impairment Liability Insurance. Contractor, at its own expense, shall carry and maintain environmental impairment liability insurance for Term, including any extensions thereto, in the amount of Ten Million Dollars

($10,000,000) per loss and in annual aggregate, covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available, without involvement of the City, automatically broaden in its form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants The policy shall stipulate that this insurance is primary insurance and that no other insurance carried by the City will be called upon to contribute to a loss suffered by Contractor hereunder and waive subrogation against the City and other additional insureds.

12.6 Additional Insureds. The City, its officers, employees, appointed and elected officials, agents and volunteers (collectively "Insured Parties") shall be named as additional insureds for all liability arising out of: activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; and vehicles and equipment owned, occupied, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Any failure to comply with reporting or other provisions of the policies including breaches

of warranties by Contractor, shall not affect coverage provided to the Insured Parties.

12.7 Deductibles and Self-Insured Retentions. In the event Contractor is self-insured as to Workers' Compensation, it shall furnish a Certificate of Permission to Self-Insure signed by the California Department of Industrial Relations, Administration of Self Insurance.

12.8 City's Right to Cure. If Contractor fails to procure and maintain any insurance required by this Agreement, City may procure and maintain, at Contractor's expense, such insurance as it may deem proper up to the policy limits referenced above and deduct the cost thereof from any monies due Contractor or recover the cost thereof from Contractor. The City will provide Contractor with concurrent notice of its intent to purchase substitute insurance. Alternatively, the City may, at its option, terminate this Agreement effective on the date of such lapse of insurance if Contractor has not cured the event of default after expiration of any applicable cure period.

12.9 Annual Aggregate Limit. Should any of the required insurance to be provided according to Sections 12.2 through 12.5 change to or be provided under a form of coverage that includes a general annual aggregate limit, and provides that

claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence limits specified above.

12.10 Cancellation and Duration of Coverage. Each policy shall be endorsed to provide that the City shall be given at least sixty (60) days prior written notice of cancellation, termination or material reduction of such insurance coverage. The above coverages shall be maintained during the Term.

12.11 Interpretation. All endorsements, certificates, forms, coverages and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

12.12 Companies. Each company providing insurance shall be an "admitted insurer" or "approved non-admitted insurer" subject to the jurisdiction of the California Insurance Commissioner.

ARTICLE 13.00 -- INDEMNITY

13.1 Contractor's Duty to Indemnify City. Contractor shall defend with counsel approved by the City, indemnify and hold harmless the City and the City's officers, agents, employees, councilmembers, appointed and elected officials, successors, and assigns (collectively "Indemnitees") from any and

all claims, demands, damages, costs, expenses (including without limitation consultants, expert witnesses and attorney services/fees), special and consequential damages, natural resource damages, punitive damages, fines, penalties, suits or actions, causes of action, legal or administrative proceedings, demands, debts, liens (collectively referred to herein as "Claims") and other expenses of any kind and description including but not limited to, injury to or death of any and all persons (including but not limited to Contractor, its agents, employees, subcontractors and their successors and assigns as well as the City or the City's agents, and all third parties), and/or on account of all property damage of any kind, whether tangible or intangible, including loss of use resulting therefrom, arising in connection with the work performed pursuant to this Agreement or caused or occasioned in whole or in part by reason of the presence of the Contractor, Subcontractor, Agents, Employees, or their proximity to the property of the City, or any other property upon which the Contractor, its Subcontractors, Agents, Employees are performing any work called for in connection with this Agreement, except for those Claims resulting solely from the City's negligence, wilful misconduct, or breach of this Agreement. Contractor's duty to defend, indemnify and

hold harmless the Indemnitees arising during the Term, and as it may be extended, shall survive the expiration or earlier termination of this Agreement.

Without limiting the generality of the foregoing, Contractor's indemnification shall include personal injury, death or damage to property (including contamination); product liability; violation of federal, state or local law; or any other Claim whatsoever connected with the activities of Contractor, its subcontractors, agents, and/or employees under this Agreement or on account of the performance or character of the work performed hereunder, including unforeseen difficulties, accidents, occurrences or omissions, including but not limited to, any failure to exclude Hazardous Waste from collection or processing; any Claim the Contractor, or its agents, subcontractors, directors, officers, employees or representatives, has breached an express or implied warranty of merchantability or fitness for particular use or any other warranty relating to any materials marketed pursuant to this Agreement; or any Claim that any of them has violated any license, copyright, or other limitation on Contractor's use of computer software in connection with Contractor's performance of services under this Agreement; any Claim that the Indemnitees have provided Contractor a franchise

which allegedly violates state or federal law under then current judicial precedent; and any Claim arising from City's performance under this Agreement.

13.2 City to Provide Notice of Claims. The City shall provide Contractor with prompt notice of any Claims received by it, and Contractor may assume the defense of any Claim, with counsel approved by the City, and Contractor shall have authority to settle any Claim provided such settlement fully releases and extinguishes Indemnitees' alleged liability under the Claim. Where a conflict of interest exists between the Indemnitees and Contractor with respect to a Claim which is covered by Section 13.1, Contractor shall provide the Indemnitees with independent legal counsel of the Indemnitees' choice, at Contractor's expense.

13.3 Hazardous Waste Indemnification. Contractor shall indemnify, defend with Counsel approved by the City, protect 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 Substance or Hazardous Wastes at any place where Contractor stores or disposes materials pursuant to this Agreement except to the extent that Contractor can demonstrate that such Claim arises solely from Hazardous Wastes collected and deposited by City employees (acting within the ordinary course and scope of their employment). 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. The City and Contractor desire to leave no doubts as to their respective roles, and that by entering into this Agreement, the City is not thereby becoming a "generator" or an "arranger" as those terms are used in CERCLA Section 107 (a) (3), and that it is Contractor, not the City, which is "arranging for" the collection from residents and others in the City, and the transport, processing and disposal of Solid Waste and Yard Waste which may contain hazardous substances. The City and Contractor agree that it is Contractor, and not the City, which will select the Transfer Station, Disposal Facility, Material Recovery Facility or Processing Facility destination of the nonrecyclable

waste which Contractor will arrange to collect, that the City has not, and, by this Agreement does not, instruct Contractor on its collection methods, nor supervise the collection and disposal of waste, and nothing in this Agreement, or other action of the City shall be construed to place title to such waste in Contractor, the parties recognizing that whatever, if any, title Contractor may gain to such waste is by operation of law, and is not the result of this Agreement. The foregoing indemnity does not apply to Solid Waste or Yard Waste (or the Residue thereof) which is deposited in a disposal facility not owned by Contractor as a result of the City's exercise of its reserved right to direct such materials to another facility under Section 4.9 or under Section 6.1.2 if the City directs the waste to be delivered to a disposal facility not owned by Contractor or an affiliate and Contractor has given the City prior written notification of its objections to such facility based on environmental concerns, together with documentation of the cause(s) for such concerns.

13.4 AB 939 Indemnification. Contractor agrees to defend, with Counsel approved by the City, indemnify and hold harmless the Indemnitees against all fines and/or penalties imposed by the California Integrated Waste Management Board, if Contractor fails or refuses to provide information specified in

Exhibit H and prevents the City from submitting reports required by AB 939 in a timely manner.

ARTICLE 14.00 -- CITY OBLIGATIONS

14.1 Approval of Rates, Adjustments. City shall approve and authorize Contractor to collect from Customers the Rates in accordance with the provisions of Article 15.00. City shall approve adjustments to the Rates, as may be appropriate from time to time, in accordance with the provisions of Article 15.00.

14.2 Community Relations Program. In conjunction with and in addition to the Community Education and Outreach Plan (Exhibit G) to be provided by Contractor, the City may provide supplemental activities, including demonstration projects, community outreach activities and events to inform City residents of the services to be provided and to encourage maximum participation in City waste management programs.

14.3 Defense of Franchise Rights. The City will make reasonable good faith efforts to prevent infringement by third parties of the rights granted to Contractor under this Agreement that Contractor brings to the attention of City and when the City determines in its sole discretion that there are infringements; provided however, that Contractor shall, with counsel reasonably

acceptable to the City, assume the prosecution (including all related costs and attorney fees) of any lawsuit or administrative proceeding necessary to enforce such rights, and, shall defend, with counsel approved by Indemnitees, indemnify and hold harmless the Indemnitees against any and all Claims arising out of City's performance under this Section 14.3. The City will reasonably cooperate with Contractor in prosecuting and defending its exclusive franchise rights. Contractor shall reimburse the City, within thirty (30) days of receipt of a City invoice, for all actual, reasonable costs associated with defense of franchise rights (including but not limited to City staff and City Attorney time, including applicable City overhead allocations, and outside consultants, including attorney fees and costs). Notwithstanding anything to the contrary contained in this Agreement, Contractor shall defend with counsel approved by the Indemnitees, indemnify and hold harmless the Indemnitees against any and all Claims to challenge, annul, void, set-aside or invalidate the City's award of this Agreement or its performance thereunder.

14.4 Coordination with Contractor(s). The City will assist Contractor in coordinating routing and scheduling matters with other City services, such as street sweeping, and if necessary, the collection of Recyclables.

14.5 City Representative. The City Manager may designate one or more City employees for receipt, review and action upon all reports, plans and other documents to be submitted to the City by Contractor hereunder, and to otherwise act as a contact person for the Contractor regarding the requirements of this Agreement. In regard to matters which are within each designee's scope of authority, Contractor may rely on the directions of the City Manager's designee as the directions of the City Manager. In the event of any question as to the authority of such designee(s), Contractor shall apply to the City Manager for final determination.

ARTICLE 15.00 -- CONTRACTOR'S COMPENSATION, COLLECTION RATES

15.1 General. Contractor shall perform all services required by this Agreement in consideration of the right to charge and collect from Customers from whom Solid Waste and Yard Waste are collected the Rates established by the City Council pursuant to this Agreement. City does not guarantee collection of such rates. Contractor does not look to City for payment of any sums under this Agreement and City has no obligation to pay Contractor any public funds under this Agreement, except as provided in Section 4.2.6, 4.3.5, 4.6 and 8.3.1.

15.2 Initial Rates. Year One Rates which Contractor may charge as of the Effective Date are those established by the City Council, a schedule of which is attached as Exhibit B-1. Until the rates set forth on Exhibit B-1 are adjusted by City, as provided below, Contractor shall provide the services required by this Agreement, charging no more than the rates set forth in Exhibit B-1 for the services it provides.

15.3 Annual Rate Adjustments. The Rates set forth in Exhibit B-1 shall be adjusted annually, as set forth below, commencing July 1, 1996, to reflect changes in the Contractor's costs of providing service. The changes will become effective as of July 1, 1996 and on July 1 of each succeeding year.

Year Two The Rates set forth on Exhibit B-1 will be changed effective July 1, 1996 to those shown on Exhibit B-2.

Year Three through Year Six The Rates in effect as of June 30, 1997 and as of June 30th of each succeeding year through June 2000 will be adjusted, effective as of the immediately following July 1 of each year, by multiplying each such rate by one hundred percent plus the sum of (a) one and one-half percent (1-1/2%) and (b) eighty percent (80%) of the percentage change in the Consumer Price Index between such Index as of January in the year in which rates are being changed and January twelve (12) months earlier.

Any decreases in the Index shall be reflected as a negative adjustment. In the case of Year Three, for example, the rates in effect in June 1997 will be increased to reflect 80% of the percentage change in the Index between January 1996 and January 1997, plus one and one-half percent (1-1/2%).

Year Seven through Year Fifteen The Rates in effect as of June 30, 2001 and in each succeeding year of the Term will be adjusted, effective as of the immediately following July 1 of each year, by multiplying each such Rate by one hundred percent plus eighty percent (80%) of the percentage change in the Consumer Price Index as of January in the year in which rates are being changed and January twelve (12) months earlier.

15.4 Maximum CPI-Based Annual Increase or Decrease. Notwithstanding the foregoing, the maximum increase or decrease in Rates in any year after July 1996 under Section 15.3 will be five percent (5%), regardless of the amount by which the Consumer Price Index has increased or decreased during the twelve (12) month period ending the preceding January. If the five percent (5%) ceiling is applied to limit increases or decreases in Rates in any year, the difference between five percent (5%) and the percentage by which Rates would have been increased or decreased

in the absence of the ceiling will not be considered in any future year.

15.5 Design of Rate Schedule. City Council reserves its legislative discretion to adjust particular components of the Rate schedule by amounts greater or less than the applicable percentage adjustment required by Section 15.3, in order to accomplish social, economic and/or environmental goals, so long as the aggregate adjustment is substantially equivalent to the amount of revenue generated by the single percentage required by Section 15.3. If City intends to adjust Rates differentially, rather than by a single percentage, it will give Contractor notice thereof on or before March 15 of the year in which Rates are to be adjusted, together with a proposed rate schedule and calculations showing that the proposed differential rate adjustment is substantially equivalent, in economic terms, to a uniform increase by the applicable percentage. (A Rate schedule which will generate revenues within $50,000 of the revenue generated within that year with a single percentage adjustment shall be considered substantially equivalent. For the purpose of projecting revenues, the Tons of Solid Waste/Yard Waste collected in the previous year shall be used.)

Contractor shall have thirty (30) days in which to submit comments on the proposed Rates. Such comments may address both the revenue projections and any impacts which revised Rates might have on Contractor's costs of performance. The City will consider such comments and will meet with Contractor, if requested, to discuss the revenue, cost and operational impacts of the proposed Rates. If Contractor does not submit any comments within thirty (30) days from the City's notice, it will be presumed to be satisfied with all aspects of the proposed differential Rate schedule.

15.6 Balancing Account. Under the previous Franchise Agreement, City established Contractor's Rates after considering the recommendations of the Alameda County Joint Refuse Rate Committee ("Committee"). The Committee's recommendations were based on its analysis of Contractor's costs for, and revenues from, providing Solid Waste services to ten (10) cities in Alameda County, including City. Contractor had asserted that rates established by cities which are members of the Committee had produced revenues insufficient to cover its costs and provide the profit required by the existing Franchise Agreement, which resulted in a "balancing account" that reflected such claimed deficit. Specifically, Contractor asserted that as of December

31, 1994, there was an aggregate cumulative deficit in the balancing account of $17,714,000, of which Contractor asserted that $11,823,000 was attributable to City. Contractor further asserted that the City's share of this deficit has continued to increase since December 31, 1994, and is projected to continue to increase through the remainder of calendar year 1995 at current rates and customer usage levels. While acknowledging these assertions, City did not necessarily agree with them. Without conceding their respective positions, the parties agree that the Rates established by this Agreement, as they are to be adjusted, are sufficient to resolve this dispute and that Contractor will make no Claim for an increase in Rates based on any asserted "balancing account" deficit, whether calculated as of a date before or after the Effective Date. Nor will Contractor attempt to recover the City's asserted share of the balancing account deficit from the other cities which are members of the Committee. Since the Rates are to be adjusted under this Agreement independent of costs and revenues, the "Balancing Account" concept is inapplicable.

15.7 Rates are Comprehensive Compensation. The Rates established by this Agreement, and as they are to be adjusted, shall be the full, entire and complete compensation due to

Contractor for furnishing all labor, materials, equipment, supplies and other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. The Rates include, without limitation, all costs for the items mentioned in the preceding sentence and also for all taxes, City fees, franchise fees, insurance, bonds, overhead, profit, and all other costs necessary to perform all the services required by this Agreement in the manner and at the times prescribed.

15.8 Adjustments in Rates for Extraordinary Changes in Disposal Costs.

15.8.1 General. Rates on Exhibit B include all costs of disposal, including all costs associated with construction, operation, closure and post-closure maintenance of Altamont for all Solid Waste and Yard Waste collected within City's boundaries ("Disposal Costs"). Disposal Costs consist of two components: (a) a Base Costs Component; and (b) a Fees Component. The specific costs in each component and their amounts expressed in dollars per Ton as of July 1, 1995 are shown on Exhibit C. The annual adjustments in the Rates provided for in Section 15.3 are intended, and expected, to cover all increases in both components of Disposal Costs, as well as

increases in costs of collection, processing, transfer and all other services to be provided under this Agreement, except as provided herein. The purpose of this Section 15.8 is to set forth the process by which Contractor may request, and the conditions under which it shall be entitled to receive, an increase in Rates in excess of that provided for in Section 15.3 based on extraordinary increases in Disposal Costs due to either an unforeseen increase in Base Costs due to future changes in law or to an increase in the Fees Component.

15.8.2 Changes in Base Costs Component due to Changes in Law.

A. General. The Base Costs Component on Exhibit C includes all costs associated with complying with all existing laws, governmental regulations and permits applicable to the Disposal Facility as of the date of this Agreement and including requirements which may be imposed on permits for which Contractor has applied for, including applied for amendments to permits, as of the Effective Date of this Agreement. The purposes of this sub-section 15.8.2 are (a) to specify those laws and governmental regulations compliance with which is included in the Base Costs Components, as well as other similar costs, increases in which may not result in an increase in the Rates, (b) to identify those

laws and governmental regulations which may be enacted in the future, a proportionate share of the costs of which may be the basis for an increase in the Rates, and (c) to specify the method by which City's proportionate share of such costs will be determined.

B. Costs Which May Not Result in an Increase in the Rates. The Rates will not be increased as a result of any of the following:

1. Costs to comply with all laws and governmental regulations existing as of the Effective Date, including but not limited to the following: the "Calderon Legislation" (former California Government Code, Sections 66796.53 and 66796.54, now California Public Resources Code Sections 45300-04, 45700, California Health & Safety Code Sections 40511, 41805.5, and 42311.5, and California Water Code Section 13273); "Proposition 65" (California Health & Safety Code, Section 25249.5 et seq., and Health & Safety Code Section 25192); the Federal Clean Air Act (42 U.S.C. Sections 7401-7642) and the California Clean Air Act (Health & Safety Code Sections 39000-44384); the Federal Clean Water Act (33 U.S.C. Sections 1251 et seq.); the Porter-Cologne Water Quality Act (California Water Code, Division 7, Section 13000 et seq.); the California

Integrated Waste Management Act of 1989 (California Public Resources Code, Divisions 30 and 31, Section 40000 et seq.); the Federal Resource Conservation and Recovery Act (42 U.S.C., Section 6901 et seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.); the California Hazardous Waste Control Act (California Health & Safety Code, Division 20, Chapter 6.5, Section 25100 et seq.); the Federal Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sections 11001-11050); the California Hazardous Materials Release Response Plan and Inventory Act (California Health & Safety Code, Division 20, Chapter 6.95, Section 25500 et seq.); the California Underground Storage Tank Act (California Health & Safety Code, Division 20, Chapter 6.7, Section 25280 et seq.); the California Occupational Safety and Health Act (California Labor Code, Division 5, Parts 1-10, Section 6300 et seq.); the Federal Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.), and the regulations adopted thereunder, including but not limited to the Solid Waste Disposal Facility Criteria promulgated by the U.S. EPA (40 C.F.R., Parts 257 and 258); Bay Area Air Quality Management District Regulation 8, Rule 34; Title 14 California Code of Regulations; Title 22 California Code of Regulations; and "Subchapter 15" (Title 23

California Code of Regulations, Sections 2510-2601), as they exist on the Effective Date of this Agreement, including provisions, if any, which become effective, or which require compliance by a date, after the date of this Agreement.

2. Costs due to Contractor's negligence, active or passive, or intentional misconduct, or fines or penalties for violations of law.

3. Costs for which Contractor is already responsible under other provisions of this Agreement.

4. Costs attributable to the classification of the Disposal Facility as Class II which are only necessary in order to allow Contractor to accept waste other than Solid Waste at the Disposal Facility.

5. Costs attributable to permits and amendments to permits (i) which have been issued to Contractor, or (ii) for which Contractor has applied for by the Effective Date of this Agreement (attached as Exhibits N and N-1, respectively).

C. Costs Which May Result in an Increase in the Rates. The Rates may be increased to reflect City's proportionate share, determined as provided in Section 15.8.2.D, of the net increase in the Base Costs Component attributable to the following, to the extent mandated by Changes in Laws (as

defined below): (1) costs of making improvements or modifications at the Disposal Facility, (2) costs of performing closure/post-closure monitoring at the Disposal Facility, and/or (3) costs caused directly by, or directly necessary for operations at the Disposal Facility, including costs of site-specific record keeping and reporting, if such costs (in items (1), (2) and/or (3)) are necessary to comply with changes to the existing laws and governmental regulations described in Section 15.8.2.B.1, with new laws and governmental regulations enacted or promulgated after the Effective Date and not otherwise excluded by virtue of Section 15.8.2 B., or with new permits and changes to the terms and conditions contained in existing permits (except as provided in Section 15.8.2.B) applicable to the Disposal Facility (collectively referred to as "Changes in Laws").

This section is not intended to allow the Rates to be increased to cover increased overhead and general/administrative expenses unless they can be specifically identified and related to disposal of Solid Waste collected in the City, e.g. a laboratory technician added at the regional level, and which are attributable to Changes in Laws.

D. Proportionate Share of Altamont Costs. To the extent that the net increase in costs of complying with Changes

in Laws are attributable to Solid Waste already in place at Altamont at the time such Change in Law occurs, then City's proportionate share of the present value of such increases in costs shall be determined by multiplying such increase in costs by a fraction, the numerator of which is the amount of Solid Waste as of the time the increase is computed that is deposited at Altamont which was delivered from the City and the denominator of which is the total amount of Solid Waste then deposited at Altamont from all sources. Contractor represents that these amounts as of January 1, 1995 are approximately 6,441,000 (six million four hundred forty one thousand) tons and 19,592,000 (nineteen million five hundred ninety two thousand) tons, respectively. The costs of compliance with Changes in Laws described in this paragraph shall be calculated on a "per Ton" basis, amortized over the useful life of the facilities constructed, and the annual amortization incorporated in Rates over the remaining Term of this Agreement. The annual increase in Rates attributable to the amortization of such costs shall be determined by dividing City's aggregate proportionate share of such costs by (i) the remaining term of this Agreement and (ii) the average number of Tons of Solid Waste collected from within the City's boundaries during the preceding year. The annual

amortization described in the prior sentence shall be added to the Rates after said rates are otherwise adjusted for said year by changes in the Index, adjustments to reflect changes in the Fees Component as described below, and adjustments to the Base Costs Components described in the following paragraph.

To the extent that the costs of complying with Changes in Law are attributable to Solid Waste not yet in place at Altamont at the time such Change in Law occurs, then the City's proportionate share of such costs shall be determined by multiplying the present value of such costs by a fraction, the numerator of which is the average number of Tons of Solid Waste from City disposed of at Altamont during the preceding three years multiplied by the number of years remaining in the term of this Agreement and the denominator of which is the total remaining permitted airspace available for disposal at Altamont as of the date of the change. As of the Effective Date of this Agreement, the remaining permitted air space is approximately 18.5 million Tons. The costs of compliance with Changes in Laws shall be calculated on a "per Ton" basis and amortized over the remaining life of the Disposal Facility and the annual amortization incorporated in Rates over the remaining Term of this Agreement by adding the City's proportionate share of such

increase to the Rates. The annual amortization described in the prior sentence shall be added to the Rates after said rates are otherwise adjusted for said year by changes in the Index, and adjustments to reflect changes in the Fees Component as described below, and adjustments to the Base Costs Components described in the preceding paragraph above. In all cases in which Contractor requests an increase in Rates above that provided for in Section 15.3 based on the costs of compliance with a Change in Laws, Contractor shall provide City, on an annual basis, evidence showing (1) that the work required by the Change in Laws has been performed, (2) the amount of costs actually incurred, and (3) that the costs incurred were necessary to comply with the Change in Laws.

E. Procedures for Sharing in Cost of Changes in Laws.

If Contractor believes that complying with Changes in Laws will increase the costs of operating the Disposal Facility, and that it is entitled, under this Section 15.8, to an increase in the Rates to reflect the costs of compliance, then it must follow the procedures in this subsection before the Rates will be increased.

1. Contractor shall give City prompt notice (in no case less than 90 days before their effective date, if

possible) of the regulations, specifically identifying them and describing what changes in operations at the Disposal Facility are required, when compliance is required, and whether Contractor or the Disposal Facility is eligible for any exemptions or variances.

2. Contractor shall thereafter submit to City, for review and comment, its proposed method for complying with the regulations, the estimated cost of compliance, the City's proportionate share thereof, and the associated increase necessary in the Rates. City will act promptly on the submission.

3. Contractor shall thereafter submit its proposed method of compliance to the appropriate regulatory agency. If the regulatory agency approves that method without conditions, the proportionate share of the costs necessary to implement that method of compliance will be the amount by which the Rates may be increased.

15.8.3 **Disposal Facility Regulatory Fees and Taxes**. If there is an increase or decrease in the existing taxes and fees shown on Exhibit C for the Disposal Facility, the change in cost will be passed through to the Customers as provided below. Similarly, if there is a new tax or fee imposed on disposition of

wastes at the Disposal Facility (not including, for example, income or franchise taxes or the like, or non-regulatory fees), the amount of the new disposition cost will be passed through to the Customers as provided below and thereafter treated as the existing taxes and fees shown on Exhibit C.

The amount by which Rates will be increased or decreased as a result of changes in the above-described elements of the fee will be calculated as follows:

1. Multiply the amount of the change in fee or tax (e.g., $0.10 per Ton) by the number of Tons collected from within the City under this Agreement disposed of at the Disposal Facility in the immediately preceding fiscal year (July 1 through June 30).

2. Divide that amount by the total revenue generated by Rates in the same year.

3. The result is the percentage by which Rates are to be increased or decreased to reflect the change in regulatory fees and taxes. Such percentage change shall be applied to the Rates prior to any adjustments for the year due to changes in the Base Cost components but after said rates are otherwise adjusted for said year pursuant to Section 15.3 and 15.4.

No fees or charges to which Contractor agrees contractually or negotiates shall be passed through to Customers unless agreed

to in writing by the City. The City acknowledges that Contractor may be able to negotiate a reduction in fees and taxes in exchange for agreeing to a Host Fee, the net result of which would be an overall reduction in the Fees Component and, in such event, the City would expect to agree to the substitution of the Host Fee but makes no present commitment to do so.

15.8.4 Transfer Station Fees and Taxes. The current fees and taxes in effect at the Transfer Station are shown on Exhibit C. If the LEA Inspection Fee ($0.09/Ton) is increased or decreased, the Rates will be adjusted as provided above for changes in the Disposal Fee. If the San Leandro Fees and Taxes increase or decrease, there will be no adjustment in Rates.

15.9 Closure/Post-Closure Maintenance; Escrow Account for Provisional Payments. Contractor first included a specific amount for Closure/Post-Closure Maintenance (CPC) in its rate application submitted to the Committee in 1991. The Committee evaluated this request from a legal, engineering and economic perspective and conducted negotiations with Contractor looking toward a comprehensive set of agreements between Contractor and all member agencies on this issue. Some of the member agencies, including City, entered in to an Agreement for Provisional Charges for the Closure and Post-Closure Maintenance of Altamont

Sanitary Landfill dated as of April 6, 1993. ("Provisional CPC Agreement".) Under the Provisional CPC Agreement, the City agreed to increase the Rates to include, on a non-precedential and provisional basis, charges for a proportionate share of CPC costs which Contractor had included in its 1993 Rate Application. This Provisional CPC Agreement was formally extended in November 1993 and the provisional CPC component of $1.66 Ton has continued to be incorporated in Rates which City has authorized Contractor to collect.

The funds collected pursuant to the Provisional CPC Agreement are required to be deposited in an Escrow Account to be used only for payment of closure and post-closure maintenance expenses. That account is Account No. 1179-071-525 at Union Bank, Oakland, California.

Upon the Effective Date of this Agreement, the Escrow Account will be closed and the funds therein released to Contractor. City will sign directions to Escrow Holder to effect their release.

Contractor and Committee are continuing negotiations toward a comprehensive set of agreements resolving the CPC issue, determining the proportionate share of the total amount of CPC costs which should be attributable to Committee member agencies

collectively, and allocating that share among each of the member agencies. No formal agreements have been signed.

Contractor acknowledges that the Rates it is authorized to collect under this Agreement, as they may be adjusted, are sufficient to cover CPC Costs at Altamont allocable to City utilizing the cost estimates and methodology employed in the negotiations with the Committee described above. Contractor further agrees that when and if an overall Settlement is reached with the Committee, Contractor will accept responsibility for paying for whatever share of CPC costs would be attributable to City utilizing the cost estimates and allocation methodology agreed upon and will not seek to allocate such costs to other Committee member agencies.

If an overall Settlement with the Committee is not reached, the parties agree that the Rates established by this Agreement, as they are to be adjusted, are sufficient to resolve this dispute and that Contractor will make no Claim for an increase in Rates based on any asserted CPC deficit, whether calculated as of a date before or after the Effective Date. Nor will Contractor attempt to recover the City's asserted share of any asserted CPC deficit from the other cities which are members of the Committee.

Finally, Contractor agrees that 1) to the best of its

knowledge no Solid Waste collected within the City has been disposed of at the Tri-Cities Refuse and Recycling Facility on Auto Mall Parkway in Fremont (formerly known as the Durham Road landfill), which is also owned by Contractor and 2) neither City nor Customers within City have any responsibility for contributing toward the cost of closure and post-closure maintenance of the Tri-Cities Refuse and Recycling Facility.

15.10 Extraordinary Events. The parties acknowledge that there may be infrequent extraordinary events which, although they do not prevent either party from performing, and thus do not implicate the Force Majeure provisions, nevertheless radically increase or decrease the cost of providing service such that the Rates and rate adjustment mechanism provided in this Agreement result in Contractor suffering losses, or enjoying profits, which are substantially outside the commercially reasonable expectations of the parties. An example of such an event is a war or embargo which increases the cost of fuel by a factor of ten (10), or economic events which reduces the cost of fuel by seventy five percent (75%). The obligation of the parties in such event is to act reasonably toward each other.

If one party believes such an event has occurred and warrants an increase or decrease in the Rates different from that

provided for in Section 15.3, it shall notify the other, providing a full explanation and a proposed change in Rates.

If City fails or refuses to increase Rates as requested by Contractor, Contractor may not terminate this Agreement or refuse to continue to provide service. However, it shall have the right to challenge the adequacy of the Rates as provided in Section 15.12.

15.11 Information Supporting Requests. If a change in Rates is requested as a result of a change in the scope of work directed by City (Section 4.7), an Extraordinary Increase in Disposal Costs (Section 15.8), or an Extraordinary Event (Section 15.10) Contractor shall promptly furnish to City all relevant operational and financial information and records necessary to evaluate it, including its audited financial statements.

15.12 Challenge to Rates. If Contractor believes the Rates have not been increased in accordance with this Agreement, it may exercise its available legal remedies, including but not limited to seeking a writ of mandate under California Code of Civil Procedure Section 1085, but it shall neither seek, nor be entitled to recover, damages from the City on any theory, including tort, breach of contract, or other.

15.13 Publication of Rates. The City shall advise Contractor of the Rates as they are proposed to be adjusted under Section 15.3 by March 15 of each year. Contractor shall provide written notice to all Customers of proposed rate changes at least thirty (30) days prior to the implementation of the new rates. The notice may be provided with, or as part of, a regular billing.

15.14 Service Discounts. Low income senior citizen customers, sixty (60) years of age or older, living in owner/occupied Single Family Dwellings who can demonstrate that they receive assistance under PG&E's California Alternate Rates for Energy Program (CARE), as it currently exists and is administered, shall receive a twelve and one-half percent (12.5%) discount on their monthly rate for service commencing on July 1, 1996. Owners of Multifamily Dwellings shall receive an eight percent (8%) discount on their monthly rate for service to allow for vacancies commencing on July 1, 1996. Contractor shall be expressly prohibited from offering additional discounts from adopted Rates charged to Customers without prior written authorization from the City which shall not be unreasonably withheld.

15.15 Contractor Obligation. Contractor shall provide services efficiently and effectively, in accordance with the established Rates, as adjusted in accordance with this Agreement. Contractor's failure to provide services and remit City fees and franchise fees in accordance with this Agreement shall not be excused by virtue of any claimed inadequacy in the Rates or by virtue of any claimed inadequacy in the labor force, productivity levels, or technology and equipment assumed in the Rates.

ARTICLE 16.00 -- DEFAULTS AND REMEDIES

16.1 Events of Default. Each of the following shall constitute an event of default hereunder:

(a) Contractor fails to perform its obligations under this Agreement or future modifications of this Agreement and (i) the failure or refusal of Contractor to perform as required by Sections 4.2 through 4.4, or Articles 11 through 13 of this Agreement is not cured within two (2) business days after receiving notice from the City specifying the breach; or (ii) in the case of any other breach of this Agreement, the breach continues for more than fifteen (15) calendar days after written notice from the City for the correction thereof, provided that where Contractor demonstrates to the City's reasonable

satisfaction that such breach cannot be cured within such fifteen (15) day period, Contractor shall not be in default of this Agreement if Contractor shall have commenced action required to cure the particular breach promptly in light of the circumstances, but in any event within fifteen (15) days after such notice and it continues such action diligently until completed;

(b) Any written representation or disclosure made to the City by Contractor in connection with or as an inducement to entering into this Agreement or any modification to this Agreement proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement;

(c) There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limitation its vehicles, maintenance or office facilities, or Processing Facilities or any part thereof, of such proportion as to substantially impair Contractor's ability to perform under this Agreement,

and which cannot be released, bonded or otherwise lifted within forty-eight (48) hours excluding weekend and holidays;

(d) Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief or other similar law now or hereafter in effect, or consents to the appointment or taking of possession by a receiver, liquidator, assignee (other than as part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator or similar official of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due, or shall take any action in furtherance of any of the foregoing;

(e) A court having jurisdiction shall enter a decree or order for relief in respect of Contractor, in any involuntary case brought under any bankruptcy,

insolvency, debtor relief or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Contractor or for any part of Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor;

(f) Contractor fails to provide reasonable assurances of performance as required under this Article 16.00 of this Agreement;

(g) Contractor fails to substantially adhere to the implementation plan approved by the City under Section 3.4.1.5; and

(h) Contractor or any permitted subcontractor fails to comply with the nondiscrimination clause of this Agreement set forth in Section 17.2.

Paragraph (g) and (h) are subject to the same notice and cure provisions as set forth in paragraph (a) above.

16.2 Remedies.

16.2.1 Termination. Upon an event of Default as defined in Section 16.1, the City shall have the right to terminate this Agreement upon a notice of not less than five (5) days, provided such termination shall be authorized by the City Council or a designee authorized by the City Council, but without the need for any hearing, suit or legal action.

16.2.2 Possession of Property Upon Default. In the event of Contractor's default, the City shall have the right to take possession of any and all of Contractor's land, equipment, facilities and other property reasonably necessary for the provision of services hereunder and the billing and collection of fees for those services. The City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of services, which may include the award of an agreement to another service provider. If the City retains possession thereof after the period of time for which Contractor has already been paid by means of bills issued in advance of providing service for the class of service involved, Contractor shall be entitled to the reasonable rental value of such property, which shall be offset against the damages due the City for Contractor's default. Contractor agrees that it will fully cooperate with the City to effect the transfer of

possession of property for the City's use. If the City so requests, Contractor shall keep in good repair all such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain property in operational condition. The City may immediately engage all or any personnel necessary for the provision of services, including if the City so desires employees previously employed by Contractor. Contractor further agrees, if the City so requests, to assist the City in securing the services of any or all management or office personnel employed by Contractor whose skills are reasonable necessary for the continuation of services. The City agrees that it assumes complete responsibility for the proper, normal use of such equipment and facilities while in its possession. Contractor covenants that it shall not create or impose any lien, charge or encumbrance on its facilities or equipment during the term of this Agreement that will prevent the City's exercise of rights under this Section 16.2.2. Contractor agrees that the City's exercise of its rights under this section: (i) does not constitute a taking of private property for which compensation must be paid; (ii) will not create any liability on the part of the City to Contractor other than the payment of reasonable rental value as provided for in

this subsection; (c) does not exempt Contractor from the indemnity provisions of Article 13.00 which are meant to extend to circumstances arising under this Section. The City has no obligation to maintain possession of Contractor's property for continued use for any period of time and may at any time at its sole discretion relinquish possession to Contractor.

16.2.3 Direct and Consequential Damages. Contractor shall be liable to City for all direct and consequential damages arising out of Contractor's default. This section is intended to be declarative of existing California law.

16.2.4 Liquidated Damages.

16.2.4.1 General. The City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticality of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual

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

16.2.4.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties further acknowledge that consistent, reliable Solid Waste and Yard Waste collection, processing and disposal services are of utmost importance to the City and that the City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Contractor fails to achieve the performance standards, or fails

to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article 16.00, the parties agree that the liquidated damage amounts set forth in Exhibit A-1 represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. The parties further agree that during the start up of services contemplated by this Agreement, situations may occur which are best dealt with in a manner different than herein provided. Between the Effective Date and June 30, 1996, the City and Contractor agree to meet and resolve problems associated with the implementation of services. In consideration of Contractor's agreement to this provision, the City agrees to not assess liquidated damages during this implementation period. If in the future there shall be a similar implementation period required to commence a new level or type of service, the City and Contractor

agree to discuss the suspension of liquidated damages for a specified period of time. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Contractor Initial Here_____ City Initial Here

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth in Exhibit A-1.

Before assessing liquidated damages pursuant to Section 16.2.4.3, the City will conduct a performance review of the type described in Section 8.2 at which specific areas of substandard performance are brought to the Contractor's attention. If, despite the performance review, incidents of the type(s) addressed at the performance review continue to occur, the City may proceed to assess liquidated damages as provided below.

16.2.4.3 Notice to Contractor. The City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints. Prior to assessing liquidated damages, the City shall give Contractor

notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of the City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with the Director of Public Works. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incidents(s)/non-performance. The Director of Public Works will provide Contractor with a written explanation of his/her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the Director of Public Works shall be final unless appealed in writing to the City Manager within ten (10) calendar days with an explanation of the basis for appeal and submittal of a non-refundable Five Hundred Dollar ($500) appeal fee.

16.2.4.4 Amount. The City may assess liquidated damages for each business day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

16.2.4.5 Timing of Payment. Contractor shall pay any liquidated damages assessed by the City at the time payments

are due to the City pursuant to Sections 8.3.3 and 8.3.4. If they are not paid within thirty (30) days following the due date, the City may (i) deduct the amount from amounts owed to Contractor pursuant to Sec. 6-4-17 of the Oakland Municipal Code; (ii) proceed against the performance bond required by Section 11.1; or (iii) if the non-performance leading to assessment of liquidated damages has been persistent and not corrected despite previous notices and assessment of liquidated damages, terminate this Agreement.

16.2.5 City Right to Set Off. The City shall have the right to set off, from any amounts then owing to Contractor or during annual Rate adjustments under Section 15.3, any amount due or damages it reasonably believes it has suffered as a result of any liquidated damages imposed upon Contractor pursuant to Exhibit A-1; provided, however, that the City shall have the burden of proof as to the appropriateness of its actions.

16.2.6 Specific Performance. By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, and the lead time required to effect alternative service, the remedy of damages for a breach hereof by Contractor is inadequate and the City shall be entitled to

injunctive relief compelling the specific performance of Contractor's obligation hereunder.

16.2.7 Right to Demand Assurances of Performance. If Contractor (i) is the subject of any labor unrest including work stoppage or slow down, sick out, picketing or other concerted job actions; (ii) appears in the reasonable judgment of the City to be unable to regularly pay bills as they become due; or (iii) is the subject of a civil or criminal judgment or order entered for violations of environmental laws, and the City believes in good faith that Contractor's ability to perform has been placed in substantial jeopardy, the City may at its option, in addition to all of the remedies that it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance that the City believes is reasonably necessary in the circumstances.

16.2.8 City's Remedies Cumulative. The City's right to terminate this Agreement, the City's right to take possession of Contractor's properties, the City's right to impose liquidated damages on Contractor, and all other remedies of this Article are cumulative, not exclusive, and the City's termination of this Agreement or exercise of one or more rights shall not constitute an election of remedies. All remedies provided in this Article

shall be in addition to any and all other legal and equitable rights and remedies which the City may have.

16.3 Excuse from Performance.

16.3.1 Force Majeure. Neither Contractor nor the City shall be excused from the performance of its obligation under this Agreement except where a party's failure to perform is due to an event of Force Majeure, as defined in this Agreement.

16.3.2 Obligation to Restore Ability to Perform. Any suspension of performance by a party pursuant to this Section shall be only to the extent, and for a period of no longer duration than, required by the nature of the event, and the party claiming excuse from obligation shall use its best efforts in an expeditious and commercially reasonable manner to remedy its inability to perform, and mitigate damages that may occur as result of the event.

16.3.3 Notice. The party claiming excuse shall deliver to the other party a written notice of intent to claim excuse from performance under this Agreement by reason of an event of Force Majeure. Notice required by this Section shall be given promptly in light of the circumstances but in any event not later than five (5) calendar days after the occurrence of the event of Force Majeure. Such notice shall describe in detail

the event of Force Majeure claimed, the services impacted by the claimed event of Force Majeure, the expected length of time that the party expects to be prevented from performing, the steps which the party intends to take to restore its ability to perform; and such other information as the other party reasonably requests.

16.3.4 City's Right in the Event of Force Majeure. The partial or complete interruption or discontinuance of Contractor's service caused by an event of Force Majeure shall not constitute an event of default under this Agreement. Notwithstanding the foregoing: (i) the City shall have the right to assume possession of Contractor's facilities and equipment in accordance with Section 16.2.2 of this Agreement in the event of non-performance excused by Force Majeure; (ii) if Contractor's excuse from performance for reason of Force Majeure continues for a period of thirty (30) days or more, the City shall have the right in its sole discretion to immediately terminate this Agreement provided that a third party is ready, willing and able to commence performance, in which case the City still shall have the right to assume possession of Contractor's property in accordance with Section 16.2.2; (iii) if Contractor is unable to collect and dispose of Solid Waste and Yard Waste as required by

this Agreement for a period of three (3) days, as a result of a strike or other labor unrest which is within the definition of Force Majeure, the City shall have the right to assume possession of Contractor's property in accordance with Section 16.2.2; and (iv) if Contractor's inability to collect and dispose of Solid Waste and/or Yard Waste for the reason identified in (iii) above continues for fourteen (14) days from the date by which Contractor gave or should have given notice under Section 16.3.3, the City may terminate this Agreement.

16.4 City's Right in the Event of Change in Law. In the event of a material change in federal or state law which substantially alters City's duties to provide for waste diversion, collection and disposal or other aspects of integrated waste management, the City shall have the right to modify this Agreement to curtail or increase the services affected by the change in law, or to terminate this Agreement entirely. The City's right to terminate this Agreement shall be limited to circumstances under which a material change in federal or state law obviates the City's right to provide the services hereunder.

16.5 Dispute Resolution. The City and Contractor agree that the only issues to be mediated pursuant to this Section shall be (i) a determination of adjustment to Rates due

Contractor for changes in the scope of work to be performed under this Agreement in accordance with Section 4.7; and (ii) failure of the City to adequately adjust the Rates pursuant to Article 15.00 of this Agreement.

16.5.1 Meet and Confer. In the event of disputes described in Section 16.5, the parties agree that they promptly will meet and confer to attempt to resolve the matter between themselves.

16.5.2 Mediation. In the event that a dispute specified in Section 16.5 cannot be resolved satisfactorily between the parties, the City and Contractor agree that such disputes shall be submitted to mandatory, non-binding mediation by a mutually agreed upon independent third party. If the dispute is not promptly and satisfactorily resolved through mediation, the parties may pursue available legal remedies. The cost of mediation shall be shared equally between the parties.

ARTICLE 17.00 -- MISCELLANEOUS

17.1 Subcontracting. Contractor shall not engage any subcontractors to perform any of the services required of it under this Agreement without the prior written approval of the City. Contractor shall notify the City no later than ninety (90) days prior to the date on which it proposes to enter into a

subcontract, providing the City with all information it requests with respect to the proposed subcontractor. City may approve or reject any proposed subcontract and/or subcontractor in its sole discretion if the proposed subcontract replaces essential services to be performed by Contractor pursuant to Sections 4.2 through 4.4 of this Agreement. City's consent to a subcontract and/or subcontractor shall not be unreasonably withheld as to other aspects of this Agreement which are not deemed to involve essential services to the City.

17.2 Nondiscrimination.

17.2.1 Equal Employment Practices. Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the term of this Agreement, Contractor agrees as follows:

(a) Contractor and any permitted subcontractors shall not discriminate against any employee or applicant for employment because of sex, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or physical handicap. The Contractor and Contractor's subcontractors shall take affirmative action to ensure

that applicants are employed and that employees are treated during employment without regard to their sex, sexual preference, race, creed, color, national origin, AIDS, ARC, or physical handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising, layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post, in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(b) Contractor and any permitted subcontractors shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to sex, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or physical handicap.

(c) If applicable, Contractor shall send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

17.2.2 Treatment of Customers. In performing this Agreement, Contractor shall not discriminate against Customers or potential Customers because of sex, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or physical handicap.

17.3 First Source Employment Referral Service. During the Term, Contractor agrees to utilize the services of the City's First Source Employment Referral Service if and when the need arises for Contractor to hire new employees. The City agrees to provide the following assistance: (i) recruit qualified applicants to be referred for employment to Contractor; (ii) assess all applicants prior to their being referred to Contractor to ensure that applicants meet the minimum qualifications of the job specifications; (iii) screen applications to ensure that

applications are complete; (iv) the State of California, Employment Development Department, will administer Contractor's math test (if any) on behalf of Contractor (this shall not be allowed to delay the hiring process); (v) schedule interviews through the City and Contractor; (vi) provide space for Contractor to conduct interviews; (vii) provide press coverage to Contractor at no cost; and (viii) respond to requests from Contractor for applicant referrals within three (3) working days of notification of position openings. Contractor shall provide the following assistance: (i) upon satisfying all obligations with Contractor's collective bargaining agreements and with all internal hiring policies and practices, use the City's First Source Employment Referral Service to allow the referral of qualified Oakland job applicants to Contractor; (ii) provide the City with applications and forms necessary for employment by Contractor; (iii) provide the job specifications for all openings to the City (exceptions may occur for expedited or unique recruitment needs; (iv) meet with the City, if necessary, to explain the various job descriptions and the needs of Contractor; (v) allow the State of California, Employment Development Department, to administer Contractor's math test (if any); (vi) interview qualified City referrals; (vii) provide feed-back on

the City's First Source Employment Referral Service; and (viii) be the sole judge as to the qualifications and fitness of any applicant.

17.4 Compliance with the City's MBE/WBE Program. Contractor agrees to achieve, or document a good faith effort to achieve, thirty percent (30%) Minority Business Enterprise (MBE) participation and five percent (5%) Women Business Enterprise (WBE) participation of the total non-essential services to be performed by it under this Agreement. (Essential services are defined as Sections 4.2 through 4.4.) Contractor shall substantially comply with the guidelines of the City's Minority and Women Business Enterprise Construction Program, attached hereto as Exhibit I and incorporated by reference herein. Within thirty (30) calendar days after execution of this Agreement, Contractor shall provide a report listing the names of MBE/WBE subcontractors and expected contract amounts for the 1996 calendar year. Thereafter, Contractor shall provide by February 14 of each calendar year this Agreement remains in force a listing of the MBE/WBE subcontractors and the expected contract amounts to be utilized during the calendar year. Contractor shall also provide quarterly reports detailing the actual MBE/WBE

participation. Quarterly reports shall be due to the City by the 20th day of February, May, August and November of each year.

17.5 Compliance with the City's SLBE Program. Contractor agrees to achieve, or document a good faith effort to achieve, twenty percent (20%) Small Local Business Enterprise participation of the total non-essential services to be performed by it under this Agreement. (Essential services are defined as Sections 4.2 through 4.4.) Contractor shall substantially comply with the guidelines of the City's Small Local Business Enterprise Program, attached hereto as Exhibit P and incorporated by reference herein. Within thirty (30) calendar days after execution of this Agreement, Contractor shall provide a report listing the names of SLBE subcontractors and expected contract amounts for the 1996 calendar year. Thereafter, Contractor shall provide by February 14 of each calendar year this Agreement remains in force a listing of the SLBE subcontractors and the expected contract amounts to be utilized during the calendar year. Contractor shall also provide quarterly reports detailing the actual SLBE participation. Quarterly reports shall be due to the City by the 20th day of February, May, August and November of each year.

17.6 Compliance with the City's Purchasing Program. Contractor agrees to achieve, or document a good faith effort to achieve, sixty percent (60%) Local Business Enterprise participation, thirty percent (30%) Minority Business Enterprise participation, and three percent (3%) Women Business Enterprise participation of the total non-essential services to be performed by it under this Agreement. (Essential services are defined as Sections 4.2 through 4.4.) Contractor shall substantially comply with the guidelines of the City's Local, Minority, and Women Business Enterprise Purchasing Program, attached hereto as Exhibit Q and incorporated by reference herein. Contractor shall provide quarterly reports detailing purchasing contracts awarded to LBE/MBE/WBE businesses. Quarterly reports shall be due to the City by the 20th day of February, May, August and November of each year.

17.7 Employment Program. Contractor shall make a good faith effort to employ forty percent (40%) Oakland residents on a job-category by job-category basis. Contractor shall be given the opportunity to demonstrate that it has made every good faith effort to attain the goal, and participation in, and hiring of Oakland residents referred by the City's First Source Employment Referral Service, is a basic requirement for Contractor's

demonstrated good faith effort. Quarterly reports detailing Contractor's work force residency shall be due to the City by the 20th day of February, May, August and November of each year.

17.8 Religious Prohibition. There shall be no religious worship, instruction, or proselytization as part of, or in connection with, the performance of this Agreement.

17.9 Political Prohibition. Monies paid by the City pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

17.10 Business Tax Certificate. Contractor shall obtain and provide proof of a valid City business tax certificate. Said business tax certificate will be valid prior to and to the conclusion of this Agreement.

17.11 Brokers. Contractor warrants that Contractor has not employed or retained any broker, agent, company or person other than bona fide, full-time employees of Contractor working solely for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any broker, agent, company or persons other than bona fide employees any fee,

commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award of this Agreement.

17.12 Conflict of Interest. The following protections against conflict of interest will be upheld:

(a) Contractor certifies that no member of, or delegate to, the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.

(b) Contractor certifies that no member of, or delegate to, the State of California legislature or the California Integrated Waste Management Board shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.

(c) Contractor certifies that no member, officer, or employee of the City or its designees or agents and no other public official of the City who exercises any functions or responsibilities with respect to the services to be provided by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.

(d) Contractor certifies that to the best of its knowledge as of the date of this Agreement no one who has any financial interest in this Agreement or receives compensation for services from Contractor is related by blood or marriage within the third degree to the Mayor or any one or more members of the City Council, City Manager, or the head of the departments involved in the preparation or monitoring of this Agreement.

(e) Contractor shall incorporate, or cause to be incorporated, in all subcontracts for work to be performed under this Agreement a provision prohibiting such interests pursuant to the purposes of this Section.

This Section is not intended, and it should not be construed to apply, to indirect benefits and interests which may arise solely by virtue of ownership of stock in Contractor's ultimate, publicly-traded, parent corporation, WMX TECHNOLOGIES, INC.

17.13 Attorney's Fees. In any dispute between the parties, whether or not resulting in litigation or any appeal therefrom, the prevailing party shall be entitled to recover from the other party all reasonable costs, including, without limitation, reasonable attorneys' fees. "Prevailing parties"

shall include without limitation (i) a party who dismisses an action in exchange for sums allegedly due such party; (ii) the party which received performance from the other party of an alleged breach of a covenant or a desired remedy where such performance is substantially equal to the relief sought in an action; or (iii) the party determined to be the prevailing party by a court of law.

17.14 Notices. All notices, demands, requests, approvals, disapprovals, proposals, consents or other communications whatsoever which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or facsimile followed by telephone or written confirmation of receipt, addressed to the respective party. If to the City, address the original letter to the City Manager with courtesy copies to the City Attorney, Director of Public Works and Director of Budget and Finance.

Director of Public Works	Director of Budget & Finance
Office of Public Works	Office of Budget & Finance
City of Oakland	City of Oakland
1333 Broadway, Suite 800	1 City Hall Plaza, 10th Floor
Oakland, California 94612	Oakland, California 94612
Telephone: (510) 238-3961	Telephone: (510) 238-2130

Facsimile: (510) 238-2233

City Attorney
Office of the City Attorney
City of Oakland
1 City Hall Plaza, 6th Floor
Oakland, California 94612
Telephone: (510) 238-3601
Facsimile: (510) 238-6500

Facsimile: (510) 238-6564

City Manager
Office of the City Manager
City of Oakland
City Hall Plaza, 3rd Floor
Oakland, California 94612
Telephone: (510) 238-3301
Facsimile: (510) 238-2223

If to Contractor, address to:

President
Waste Management of Alameda County, Inc.
172 98th Avenue
Oakland, California 94603-1004
Telephone: (510) 430-8509
Facsimile: (510) 613-0299

Either party may designate a different mailing address or a different telephone or facsimile number by providing written notice to the other party as provided in this Section. Notice by City to Contractor of a missed pick-up or a service recipient problem or complaint may be given to Contractor orally by telephone at Contractor's local office with written confirmation sent within twenty-four (24) hours of the oral notification.

17.15 Waiver. Waiver of any term or condition contained in this Agreement by any party to the Agreement shall be in writing and shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or a waiver of any other term or condition contained in the Agreement. The

subsequent acceptance by City of any fee, or any other monies which become due from Contractor to City shall not be deemed to be a waiver by City of any breach or violation of any term, covenant or condition of this Agreement.

17.16 Assignment. Except as expressly provided for in this Agreement, neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement. Under no circumstances shall the City be obligated to consider any proposed assignment by Contractor if Contractor is in default at any time during the period of consideration.

17.16.1 Events Considered to be Assignments. For purposes of this Section when used in reference to Contractor, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result in a change of control of

Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

17.16.2 Provision of Vital Services. Contractor acknowledges that this Agreement involves rendering a vital service to the City's residents and businesses, and that the City has selected Contractor to perform the services specified herein based on (i) Contractor's experience, skill and reputation for conducting its Solid Waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable environmental laws, regulations and best Solid Waste management practices, and (ii) Contractor's financial resources

to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

17.16.3 City's Consent to Assignment. If Contractor requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by the City unless and until Contractor has met the following requirements:

(a) Contractor shall undertake to pay the City its reasonable expenses for attorney's 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;

(b) Contractor shall furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years; and

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

17.16.4 Assignment to WMX TECHNOLOGIES, INC. Notwithstanding Section 17.16.3, Contractor may assign this Agreement to any affiliate or other entity which is owned or controlled by WMX TECHNOLOGIES, INC., provided (i) the assignee satisfies Section 17.16.3(a)-(c) herein, and (ii) WMX TECHNOLOGIES, INC. shall guarantee assignee's performance under this Agreement.

17.17 Captions. The captions appearing in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope and intent of this Agreement or any of the provision hereof.

17.18 Interpretations. Each party, and counsel for each party, has reviewed and been provided the opportunity to revise this Agreement. Accordingly, the normal rule of construction to the effect of any ambiguities being resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment thereto.

17.19 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

recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies which succeed to or assume the functions they are currently performing.

17.20 Amendment. No modification, amendment or supplement to this Agreement will be binding on the parties unless it is made in writing, duly authorized by Contractor and the City, and signed by both parties.

17.21 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 Alameda County.

17.22 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the

application of this Agreement to other situations shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is be found to void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement, subject to the provisions in Section 3.6.

17.23 Guaranty of Contractor's Performance. Pursuant to a guaranty in substantially the form attached as Exhibit K, WMX TECHNOLOGIES, INC., an Illinois corporation which owns all of the issued and outstanding common stock of Waste Management, Inc., an Illinois corporation which owns all of the issued and outstanding common stock of Contractor, has agreed to guaranty Contractor's performance of this Agreement. The Guaranty is being provided concurrently with Contractor's execution of this Agreement.

17.24 Effect on Existing Agreements.

17.24.1 1978 Franchise Agreement. The 1978 Franchise Agreement, as amended, will remain in full force and effect until the first day of the Term of this Agreement, as of which date it will (assuming this Agreement becomes effective) automatically

terminate. Upon the commencement of this Agreement, the parties will cooperate with each other to ensure a smooth transition between the 1978 Franchise Agreement and this Agreement. Contractor shall keep all insurance policies required by the 1978 Franchise Agreement in force until the commencement of this Agreement, and shall ensure that there is no gap in coverage as a result of the termination of the 1978 Franchise Agreement and its supersession by this Agreement. Contractor shall continue to defend, hold harmless and indemnify the Indemnities, as an obligation of this Agreement, against Claims which arise in whole or in part from acts or omissions which occurred, or are alleged to have occurred, during the Term of the 1978 Franchise Agreement, but prior to the commencement of this Agreement. If this Agreement does not become effective, the 1978 Franchise Agreement shall remain in effect and the parties shall be governed by its provisions unless and until it is subsequently modified.

17.24.2 Solid Waste Route Collection Information. Contractor shall provide the City with new route maps and route sheets at least thirty (30) days prior to the implementation of curbside Solid Waste collection. Subsequently, Contractor shall present new route maps and route sheets to the

City at least thirty (30) days prior to route changes to allow timely City-wide changes in recycling routes. Minor route adjustments may be made with less than thirty (30) days notice if mutually agreed upon by the City and Contractor. Contractor shall make a reasonable effort to minimize changes in the pickup day for residential customers and to minimize the disruption to existing service and to the City's Recycling Agreements.

17.25 Cooperation with Subsequent Providers. At the expiration of the Term provided for hereunder, or in the event of termination under Article 16.00 of this Agreement, Contractor, at its own expense, shall cooperate fully with the City, as necessary, to ensure an orderly transition to any and all new service providers, and the City shall have no continuing obligations to Contractor other than those expressly provided for under this Agreement.

17.26 Access to and Disclosure of Records.

17.26.1 Access to Records. Contractor shall permit access to its records as set forth in Sections 7.3, 8.3 and its records of employment, employment advertisements, application forms, and other pertinent data or records relating to Contractor's obligation under Sections 17.2, 17.3 and 17.7 of this Agreement, by the California Fair Employment Practices

Commission, the City or any appropriate employee, department, or agent designated by the California Fair Employment Practices Commission or by the City respectively, for the purpose of investigating Contractor's compliance with the California Fair Employment Practices Act or Sections 17.2, 17.3 and 17.7 of this Agreement. Should Contractor be required to provide reports to the City concerning its obligations under this Section, said reports may be in summary form (with private or identifying information about specific employees omitted) which set forth the relevant information in a statistical way.

17.26.2 Confidential Information. Contractor maintains that the information provided pursuant to Sections 7.3 (as designated by Contractor), 8.3., 17.2, 17.3 and 17.7 is confidential and proprietary information ("Confidential Information"). The City will not disclose the Confidential Information (or any version or permutation thereof) to any third party, including without limitation Contractor's competitors and Customers. City further agrees that it will not use the Confidential Information for any purpose other than that stated above, or in Section 8.3., and the City and its representatives (which includes employees, officials, consultants and contractors) will not disclose the Confidential Information to

any Person, except that the Confidential Information may be disclosed to those representatives for evaluating performance herein. All representatives of the City and other Persons to whom Confidential Information is disclosed will be informed of the confidential nature of the Confidential Information and shall agree to be bound by this Agreement.

17.26.3 Permitted Release of Information. Confidential Information shall not be subject to this Agreement if such information (i) at the time of disclosure or thereafter, is generally available to and known by the public (other than as a result of its disclosure by the City or its representatives), (ii) was available to the City on a non-confidential basis prior to disclosure by Contractor, or (iii) becomes available to the City on a nonconfidential basis from a Person who is not otherwise bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to Contractor or its representatives or any other person, or is not otherwise prohibited from transmitting the information to the City.

17.26.4 Required Release of Confidential Information. If the City or any of its representatives are requested or required in legal proceedings, subpoena, civil investigative

demand, Public Records Act request or other similar process to disclose all or any part of the Confidential Information, the City shall immediately notify Contractor in writing of the existence, terms and circumstances surrounding such a request or requirement so that Contractor may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy of the receipt of a waiver by Contractor, in the written opinion of counsel for the City, disclosure of information by the City or any of its representatives is nonetheless legally required, the City or its representatives may, without liability hereunder disclose only that portion of the Confidential Information which such counsel advises is legally required to be disclosed, and exercise its best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with Contractor to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information so furnished.

17.27 Parties in Interest. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights on

any persons other than the parties to it and their representatives, successors and permitted assigns.

17.28 Entire Agreement; Exhibits Included. This Agreement is executed in four (4) originals each of which is deemed to be an original. This Agreement consists of one hundred forty two (142) pages and exhibits A through S attached hereto and constitutes the entire understanding and agreement of the City and Contractor with respect to the services to be provided under this Agreement. No prior written or oral statement or proposal shall alter any term or provision of this Agreement.

17.29 Recitals. The foregoing recitals are true and correct and are an integral part of this Agreement.

17.30 Parity of Treatment. If within four years after the Effective Date, Contractor enters into a comparable contract (as defined below) with another currently existing city or agency in Alameda County under which Contractor provides residential curbside collection at rates lower than those established by Exhibit B-1 (as adjusted by changes to the Index), City shall be entitled to lower the residential curbside rates for Customers in the City, as provided in this Section.

If the City believes that Contractor has established lower residential curbside rates under a comparable contract, it may

notify Contractor and demand a meeting. Contractor shall attend such meeting and shall provide any relevant information requested by the City pertaining to the other contract and the rates charged thereunder. The information furnished shall be subject to the confidentiality provisions of Section 17.26, through mediation and arbitration.

If the parties do not agree that the other contract is a comparable contract or that the rates charged thereunder are lower than those charged under this Agreement, they shall engage a mediator to assist in the resolution of this dispute.

If the parties are unable to resolve the dispute through mediation within 60 days, and the City continues to believe it is entitled to lower residential curbside rates to Customers in the City to those in effect under the other contract, it may (a) submit the dispute to mandatory binding arbitration conducted in Alameda County under the commercial dispute resolution rules of the American Arbitration Association or (b) seek a judicial declaration that it is entitled to lower such rates under this Section. Unless and until the arbitrator or judge, as the case may be, has determined that the City is entitled to lower the rates under this Section, the rates shall be adjusted as otherwise provided in this Agreement.

A "comparable contract" is one which requires curbside collection of residential solid waste, provides for disposal of waste at Altamont, has a term of at least 10 years, provides for collection and disposal of between 200,000 and 400,000 tons annually, and all other material terms and conditions of which (including but not limited to indemnification, insurance, security for performance and incorporation of alleged balancing account deficits) are substantially similar to those of this Agreement.

In evaluating the equivalence of rates under this Agreement, franchise fees or other fees imposed by the City of the other agency shall be excluded.

IN WITNESS WHEREOF, the City and Contractor have duly authorized execution of this Agreement, and have executed this Agreement on the date first written above.

RECOMMENDED FOR APPROVAL

By: _____
Harry Schrauth
Support Services Administrator, Office of Public Works

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.
A California Corporation

By:_____
President

CITY OF OAKLAND,
A Municipal Corporation

By:
City Manager

APPROVED AS TO FORM:

By:_____
Howard S. Yamaguchi
Associate Group Counsel

APPROVED AS TO FORM AND LEGALITY:

By:
Mark Wald
Deputy City Attorney