

AGREEMENT FOR
RESIDENTIAL RECYCLING SERVICES

Between

THE CITY OF OAKLAND

and

CALIFORNIA WASTE SOLUTIONS

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**AGREEMENT BETWEEN THE CITY OF OAKLAND
AND
CALIFORNIA WASTE SOLUTIONS**

RESIDENTIAL RECYCLING SERVICES

THIS AGREEMENT, entered into this ____th day of _____, 2004, by and between the CITY OF OAKLAND, a municipal corporation, hereinafter referred to as “City”, and California Waste Solutions, hereinafter referred to as “Contractor”, is in reference to the following:

RECITALS

WHEREAS, the City desires to continue its Residential Recycling Services program (Program) for the collection, Processing, and marketing of Targeted Recyclable Materials; and

WHEREAS, Contractor represents that it has the necessary experience and expertise to provide Residential Recycling Services; and

WHEREAS, Contractor has demonstrated that it is qualified and competent to perform the Residential Recycling Services desired by the City; and

WHEREAS, the City and Contractor entered into and completed negotiations for Residential Recycling Services; and

WHEREAS, the City and Contractor desire to enter into an Agreement whereby Contractor shall perform Residential Recycling Services related to the City’s Program; and

WHEREAS, the City and Contractor desire to leave no doubts as to their respective roles, and that by entering in 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 and recycling of Targeted Recyclable Materials from Customers in Oakland which Targeted Recyclable Materials may contain Hazardous Waste; and

WHEREAS, Contractor has represented and warranted to the City that it has the experience, responsibility, and qualifications to conduct recycling programs and to arrange with Customers and other entities in Oakland for the collection, safe transport, Processing and sale of Targeted Recyclable Materials and disposal of Processing Residue which may inadvertently contain Hazardous Waste; and

WHEREAS the City Council of the City of Oakland determines and finds that the public interest, health, safety and well being would be best served if Contractor were to make arrangements with Customers and other entities to perform these services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS, AND CONDITIONS HEREIN STATED, THE CITY AND CONTRACTOR DO HEREBY AGREE AS FOLLOWS:

ARTICLE 1.00 -- DEFINITIONS

1.1 AB 939. AB 939 means the California Integrated Waste Management Act (Public Resources Code 40000 *et seq.*), as amended, including rules and regulations promulgated thereunder as amended, which among other things, requires each city and county to divert fifty percent (50%) of its waste stream from landfill disposal by December 31, 2000.

1.2 Agreement. This Agreement between the City and Contractor for the provision of Residential Recycling Services in the Service Area, including all attachments, and any amendments hereto.

1.3 City. "City" shall mean the City of Oakland, a municipal corporation, including any subsequently annexed geographic portions thereof.

1.4 City Facility. "City Facility" shall mean a building occupied by City employees or a building in which City services are provided and which is designated in Attachment A to this Agreement. "City Facilities" may include Administrative, Fire, Police, Parks, Recreation Centers, Library, Headstart Centers, Service Centers, and other buildings as may be determined by the Director from time to time.

1.5 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 Contractor.

1.6 City Representative. The City Administrator shall be the City's Representative. The City Administrator may designate one or more City employees to act as his/her representatives to 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.

1.7 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 the City and Contractor shall agree upon in writing shall be substituted for the Consumer Price Index.

1.8 Contaminant. "Contaminant" shall mean any materials other than Targeted Recyclable Materials collected in the Program.

1.9 Contract Manager. The employee(s) designated by the City Administrator to act as his/her representative to Contractor and the employee(s) designated by Contractor to act as its representative to the City regarding the day-to-day management of this Agreement. The City

may rely on the directions of Contractor's Contract Manager as the directions of Contractor and Contractor may rely on the directions of the City's Contract Manager in all matters relating to this Agreement.

1.10 Contractor. "Contractor" shall mean California Waste Solutions.

1.11 Customer. "Customer" shall mean a Single Family Dwelling, Multi-Family Dwelling, City Facility, or Small Business; and the residents, employees, owners, and managers therein.

1.12 Director. "Director" shall mean the Director of the Public Works Agency, City of Oakland or his/her designated representative.

1.13 Effective Date. "Effective Date" shall be January 1, 2005.

1.14 Extended Term. "Extended Term" shall mean the agreement period following the end of the Service Term.

1.15 Force Majeure. "Force Majeure" shall mean riots, wars, terrorist acts, civil disturbances, insurrections, epidemics, hurricanes, earthquakes, floods, fire, acts of God, government orders and regulations, and other similar catastrophic events that 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 not constitute events of force majeure.

1.16 Hazardous Waste. For purposes of this Agreement, Hazardous Waste shall include those wastes defined as Hazardous Waste in Oakland Municipal Code Section 8.28.010 or as subsequently amended. Section 8.28.010 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: (a) substances that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials, toxic substances or related hazardous materials; and (d) substances defined, regulated or listed (directly or by reference) by applicable local, State or federal law as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutant," "reproductive toxins," "toxic waste," or "toxic substances," or

similarly identified as hazardous to human health or the environment, including those so defined in or pursuant to any of the following statutes: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC Section 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC Section 1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq.; (iv) the Clean Water Act, 33 USC Section 1251 et seq.; (v) California Health and Safety Code Section 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC Section 7901 et seq.; and (vii) California Water Code Section 13050; all rules and regulations adopted and promulgated pursuant to such statutes, and future amendments to or recodifications of 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; any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

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.

1.17 Household Rate. "Household Rate" shall mean the monthly rate paid to the Contractor by the City for service to Single Family and Multi-Family Dwellings.

1.18 Multi-Family Dwelling. "Multi-Family Dwelling" shall be defined as any residential structure with five or more living units and/or any residential structure which uses bin service for garbage collection or as determined by the Director.

1.19 Non-Recyclable Contaminant. "Non-Recyclable Contaminant" shall mean any material that is not a Targeted Recyclable Material or a Non-targeted Recyclable Material collected in the Program.

1.20 Non-Targeted Recyclable Materials. "Non-targeted Recyclable Materials" shall mean any Recyclable Material listed in Attachment B, excluding Targeted Recyclable Materials, that Contractor can and does recover through Processing and returns to the economic mainstream.

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

1.22 Plastic Containers. "Plastic Containers" shall mean 'narrow-neck' PET (#1), HDPE (#2), PVC (#3), LDPE (#4), PP (#5), PS (#6), and other (#7) plastic containers.

1.23 Processing. “Processing” shall mean the act of preparing source separated or commingled recyclables into homogeneous types of materials that are in a form suitable to be returned to the economic mainstream in the form of commodities.

1.24 Processing Residue. “Processing Residue” shall mean any material, separated from Recyclable Materials during Processing, that is not recycled, composted, marketed or otherwise returned to the economic mainstream, and which shall be disposed of as Solid Waste, medical waste or Hazardous Waste, as appropriate.

1.25 Program. “Program” shall mean the City of Oakland’s program for Residential Recycling Services for the collection, Processing, and marketing of Targeted Recyclable Materials.

1.26 Recyclable Material. For the purpose of this Agreement, “Recyclable Material” or “Recyclables” shall mean 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 as defined in the Oakland Municipal Code. Used motor oil and used motor oil filters properly set out for collection shall also be included in the definition of “Recyclable Material”.

1.27 Residential Recycling Services. “Residential Recycling Services” shall be defined to include services provided to Single Family Dwellings, Multi-Family Dwellings, City Facilities, and subscribing Small Businesses.

1.28 Service Area. “Service Area” shall mean the geographic area in which the City authorizes Contractor to provide Recycling Services as defined in this Agreement.

1.29 Service Term. “Service Term” shall mean the Agreement period from January 1, 2005 to and including December 31, 2012.

1.30 Single Family Dwelling. “Single Family Dwelling” shall be defined as any residential structure that has four or fewer living units within it and/or those structures that use can service for garbage or as determined by the Director.

1.31 Small Business. “Small Business” means a business located within the Small Business Service Area of Contractor as defined by the map attached as Attachment V and (a) uses can/cart service for Solid Waste or (b) shares bin service for Solid Waste with other Small Businesses or (c) generates an amount of Recyclables up to 2-96 gallon containers per week or up to 1-96 gallon container and one (1) yard of corrugated cardboard. Unless otherwise requested by the owner(s) of an in-home office(s), an in-home office shall be eligible to participate in the Program as a Single Family Dwelling but without any special considerations or privileges other than those provided to the dwelling unit.

1.32 Solid Waste. “Solid Waste” shall mean 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 semi-solid 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.

1.33 Source Separated Materials. “Source Separated Materials” shall mean Targeted Recyclable Materials 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.

1.34 Solid Waste Franchise Agreement. “Solid Waste Franchise Agreement” shall mean that Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services between the City of Oakland and Waste Management of Alameda County dated December 1, 1995, including all exhibits and any amendments thereto.

1.35 Targeted Recyclable Materials. “Targeted Recyclable Materials” shall be those Recyclable Materials collected in the Program and shall be:

- a. Newspaper
- b. Mixed paper (including white and colored paper, magazines, telephone books, chipboard, junk mail, and high grade paper)
- c. Corrugated cardboard
- d. Glass containers
- e. Metal containers (ferrous, non-ferrous, and bi-metal containers including empty and dry latex paint cans and aerosol containers)
- f. Aluminum foil and pie plates
- g. Plastic containers
- h. Polycoated paper containers, including aseptic packaging (e.g., drink boxes and soy milk boxes) and gable top milk and juice cartons
- i. Used motor oil
- j. Used motor oil filters

The City and Contractor may mutually agree to include additional materials or remove materials from this list of Targeted Recyclable Materials.

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 financial statements for its most recent fiscal year that fairly present, 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. Contractor shall furnish qualified drivers, mechanics, supervisory, customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner. Contractor shall provide the type of personnel listed in Attachment W in numbers commensurate to adequately provide the services required pursuant to this Agreement. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous, professional manner. Contractor shall take appropriate corrective measures if any employee does not conduct themselves in a courteous, professional manner while performing services required by 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.

ARTICLE 3.00 -- TERM AND SCOPE OF AGREEMENT

3.1 Service Term. The Service Term of this Agreement shall be from the Effective Date and shall end on December 31, 2012.

3.2 Extended Term. The City may extend the Service Term at its sole discretion for up to three (3) years under the then existing terms and conditions. The City shall give Contractor notice in writing no less than twelve (12) months prior to the end of the Service Term of its intent to exercise the extension option. At the expiration of the Service Term or extended Service 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.

3.3 Evaluation of Performance. The City shall evaluate the performance of Contractor on an annual basis. The City and Contractor shall meet to resolve areas of concern and review suggestions and/or recommendations for improving services. Nothing in this section shall preclude the City or Contractor from scheduling additional meetings if necessary. Said evaluations shall commence at the end of the 2005 calendar year and occur each year thereafter during the Service Term. The City's failure to evaluate Contractor as set forth in this section shall not affect the rights and obligations of the City or Contractor in the rest of this Agreement.

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 and Insurance. Contractor shall have furnished the Performance Bond, required pursuant to Article 14.00 and in substantial conformance with Attachment C, and the evidence of insurance policies required by Article 15.00, 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 shall submit, no later than August 1, 2004, subject to review and approval by the City, a detailed implementation plan addressing all reasonably foreseeable and relevant Program start-up issues, which shall be included as Attachment D. Contractor shall not commence the delivery of Single Stream containers prior to January 17, 2005. The City's approval of the implementation plan shall not be unreasonably withheld. Contractor shall employ a manager in charge of and dedicated to overseeing the roll out of single stream recycling in order to minimize start-up problems and negative impacts on Oakland residents. This manager shall at a minimum possess:

- a. Sufficient authority to authorize and direct Contractor's resources in operational aspects of the roll out of single stream recycling; and
- b. Prior solid waste or recycling industry experience to include: management oversight of residential solid waste or recycling program roll outs in service areas of comparable size to Contractor's Service Area; management oversight of customer service operations; and management oversight of residential collection operations.

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 and Scope of Agreement. Subject to the requirements and conditions of this Agreement, the City hereby grants to Contractor the privilege and duty during the Service Term, and any extension thereof, to engage in the business of collecting, transporting, Processing and marketing of Targeted Recyclable Materials generated by Single Family Dwellings, Multi-Family Dwellings, City Facilities, and Small Businesses, located within the Contractor's Service Area.

Contractor recognizes that this Agreement does not provide any additional rights and that it must abide by the terms of the Oakland Municipal Code Chapter 8, Article 28.

The execution of this Agreement to collect, transport, process, and market Targeted Recyclable Materials shall be interpreted to be consistent with federal and state laws, now and during the Service Term and any Extended Term. The scope of this Agreement shall be limited by current and developing state and federal laws with regard to Solid Waste handling, exclusive franchise, control of Recyclable Materials, 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 services as specifically set forth herein, Contractor agrees that the scope of the Agreement 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 Agreement 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.

ARTICLE 4.00 -- SERVICES PROVIDED BY CONTRACTOR

4.1 General. Contractor shall provide recycling collection, Processing and marketing services as described 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 Customers within the Service Area are provided reliable, courteous and high-quality Residential Recycling Services 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.

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.

4.1.2 Source Separated Recyclables. Contractor is prohibited by Oakland Municipal Code Section 8.28.060 from collecting loads that contain more than 10 percent by weight of Non-Recyclable Contaminants. The City and Contractor recognize the vital role that Contractor's drivers and supervisors play in minimizing contamination. Contractor shall ensure that drivers and supervisors execute agreed upon contamination minimization actions including but not limited to the use of Non-Collection Notices and load monitoring. The City and Contractor further recognize the vital role that public education plays in minimizing contamination. Public education materials shall be consistent with and support the agreed upon contamination minimization actions executed in the field.

4.1.3 On Site Sampling. Contractor shall make available to the City, or its authorized agent, all resources, including but not limited to, access to collection vehicles and loads, space within Contractor's facilities, weight documents, and nominal assistance from Contractor, necessary for the sampling of unsorted material from selected route trucks prior to processing, for the purpose of characterizing collected Program materials and quantifying Non-Recyclable Contaminants.

Sampling may be conducted quarterly during the first two years of the Agreement and semi-annually in the third year. In subsequent years the City may conduct an annual sample. In the event that any sampling after year two shows a contamination level greater than 10% by weight for Non-Recyclable Contaminants, the City may reinstate a quarterly sampling frequency. The City reserves the right to conduct samples on a less frequent basis than allowed by this section.

4.1.4 Contamination Remedies. In the event that Non-Recyclable Contaminants from a single collection route exceeds 10% by weight, Contractor shall take specific actions with the identified driver and/or route to ensure consistent application of agreed upon contamination minimization actions, including but not limited to the use of non-collection notices and load monitoring.

In the event that it is determined, through load sampling authorized by Section 4.1.3 of this Agreement that there is greater than 10% by weight of Non-Recyclable Contaminants in a statistically significant number of Contractor's loads delivered from its Service Area for Processing, Contractor shall deploy collection route inspector(s) for a period of at least three (3) months. One inspector shall be required for every two percentage points or portion thereof above the 10% allowable contamination level. The route inspector(s) shall work with collection route drivers to identify sources of Non-Recyclable Contaminants, and take appropriate corrective steps including but not limited to issuing non-collection notices and otherwise communicating with Customers to reduce contamination in recycling set outs. If the amount of Non-Recyclable Contaminants remains greater than 10% by weight for six consecutive months, the City and Contractor shall evaluate and implement other strategies at Contractor's expense to reduce the amount of Non-Recyclable Contaminants below 10%.

4.2 Contractor's Service Area. Contractor's Service Area shall be defined by the map attached as Attachment E. The street and/or physical boundaries of this service area are as follows:

The Northern, East and West borders are the Oakland City Limits. The South border is the Lake Merritt Channel, Lakeshore Avenue, East 18th Street, Park Boulevard, Interstate 580, Fruitvale Avenue, MacArthur Boulevard, Lincoln Avenue, and Joaquin Miller Road (with the exception of homes located on Pierpoint Avenue).

Service Area boundary disputes shall be resolved by the Director, whose decision will be final. The Director may also make minor adjustments to Service Area boundaries as required to increase the Program's effectiveness and efficiency. These adjustments shall be limited to a maximum increase or decrease of the number of dwellings in Contractor's Service Area of one and one-half percent (1.5%) estimated by the City to be in the Service Area (73,280 dwellings) as of Agreement execution. The City and Contractor may mutually agree upon increases or decreases greater than said amounts.

Contractor agrees to not provide collection services for Targeted Recyclable Materials at Single and/or Multi-Family Dwellings to areas within the City but outside of Contractor's Service Area without the written permission of the Director. Contractor acknowledges that the other recycling contractor for the City's Residential Recycling Program has provided a reciprocal agreement to the City.

4.3 Single Family Dwelling Collection and Service Requirements.

4.3.1 Frequency of Collection. Contractor shall provide weekly collection to all Single Family Dwellings on the same day as Solid Waste collection unless otherwise approved by the Director. Contractor shall recognize all holidays that are delineated in the Solid Waste Franchise Agreement and delay services by one day to ensure that Contractor's collection schedule conforms to the Solid Waste collection schedule. Said holiday schedule may result in Contractor performing collection services approximately four Saturdays per year. City shall communicate holiday schedule to Contractor as necessary.

4.3.2 Material Preparation Requirements.

- a. Single Family Dwellings will be required to place commingled Targeted Recyclable Materials in a recycling container provided by Contractor.
- b. Corrugated cardboard is required to be flattened and no larger than 3' by 3' and be set out (1) stacked or bundled next to a recycling container, (2) or in the recycling container provided by Contractor. Contractor is obligated to collect all corrugated cardboard meeting the dimensional requirements that is set out for collection.
- c. Used motor oil is required to be placed in a Contractor-provided container and placed next to the recycling container. Contractor may decline collection of oil in

incorrect containers. Contractor shall decline collection of contaminated used motor oil or any other fluids that have been set out for collection.

- d. Used motor oil filters are required to be placed in a Contractor-provided container and placed next to the recycling container. Contractor may decline collection of oil filters in incorrect containers.

4.3.3 Collection Time and Location. Collection from Single Family Dwellings shall occur between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, regardless of weather conditions and on the same day as when Solid Waste is collected by the City's exclusive franchised Solid Waste collector. The Director may authorize an extension of hours on a route-by-route basis, which authorization shall not be unreasonably withheld.

Collection from Single Family Dwellings shall be performed at curbside or streetside, depending on the area with the following exceptions: (a) Contractor shall provide special handling service for Single Family Dwellings in Contractor's Service Area, which shall include backyard, sideyard, driveway, front porch or alley service to qualifying residents. A resident will be considered qualified for special handling service if the resident receives backyard Solid Waste collection service for no additional charge pursuant to Section 4.2.2 (i) of the Solid Waste Franchise Agreement; and (b) Contractor shall provide backyard Residential Recycling Service for no additional charge for Single Family Dwellings meeting the criteria for a curbside placement exemption as set forth in Section III of the Supplemental Agreement dated December 2, 1995 between the City and the holder of the City's Solid Waste Franchise Agreement.

Contractor shall provide backyard Residential Recycling Service for Single Family Dwellings subscribing to premium backyard Solid Waste collection service from the holder of the City's Solid Waste Franchise Agreement. Contractor shall be paid by the City for this service pursuant to Section 12.1 (g).

4.3.4 Material Handling. Contractor shall collect all Targeted Recyclable Materials in, overflowing, or adjacent to the recycling container when material has been scattered within five feet of the container due to scavenging or adverse weather conditions.

Contractor is authorized to decline collection of Targeted Recyclable Materials mixed with Solid Waste, Hazardous Waste, or not prepared in accordance with Program requirements. If Contractor declines collection, Contractor shall affix a note to or place a note within the recycling container explaining why collection service was declined. Setouts improperly prepared shall be cleaned-up and taken by the driver the first time, with Program literature left behind which references the specific problem. Contractor's drivers shall reject setouts from Single Family Dwellings that continue to improperly prepare setouts. Rejected setouts shall be tagged with a brightly colored tag visible to the resident and anyone viewing the setout. Contractor's drivers shall report the address and reason(s) for rejection to Contractor's dispatcher and customer service representative by

two-way radio. At the end of the business day, Contractor shall mail an explanation of the setout rejection and Program literature to the resident. Should the resident call Contractor's office before the end of the business day, a record of the rejection should be on file. Contractor's customer service staff shall explain the problem from an informed perspective, and, where necessary and practical, make the concession of having the driver return to get a setout that the resident has properly prepared.

The City and Contractor shall review any problems encountered by Contractor because of rejected setouts and shall mutually agree upon proposed solutions. If necessary, the City and Contractor shall meet with the holder of the Solid Waste Franchise Agreement to arrange a process/procedure for the collection of rejected setouts as Solid Waste.

If any used motor oil is spilled, by either resident or Contractor's employee, Contractor shall use appropriate absorbent and/or other materials to clean up the spill.

4.3.5 Recycling Containers. Contractor shall be solely responsible for purchase and distribution of recycling containers of approximately 64 gallons for all Single Family Dwellings. Contractor shall be solely responsible for purchase and distribution of all necessary oil recycling containers. Style, color, size, manufacturer, and copy to be printed or embossed on the containers shall be subject to approval by the City.

Containers for the collection of used motor oil shall have a minimum of four quarts of volume, shall be clear or translucent, have a secure screw top cap, and be clearly marked as used motor oil containers. The City and Contractor may agree to the use of an alternative container. The collection, handling, and transportation of used motor oil containers shall be in compliance with all applicable laws and regulations.

All newly occupied or constructed housing units shall be provided a recycling container and collection service within one week of service request during the duration of the Program. Concurrent with delivery of the recycling container, Contractor shall deliver City-approved Program information, including but not limited to printed materials.

4.3.6 Replacement of Recycling Containers. In the event recycling containers are lost, stolen, damaged or destroyed, Contractor shall be responsible to provide replacement containers within one week of request by customer or City. Contractor shall be solely responsible for the purchase and distribution of replacement containers. During the Service Term of the Agreement, Contractor shall be responsible for providing annual replacement containers totaling one percent (1.0%) of the number of Single Family Dwellings serviced. Should the City elect to extend the Agreement pursuant to Section 3.2, Contractor shall be responsible for providing additional replacement containers totaling one percent (1.0%) of the number of Single Family Dwellings serviced on an annualized basis. If the City elects to extend the Agreement for less than twelve months, said amount of replacement containers shall be pro-rated. The quantity of replacement containers owed to the City shall be cumulative from year to year. Upon expiration of

the Agreement, the City relinquishes any claim it may have for reimbursement from Contractor for any unused replacement containers.

If during any year the Customers require more replacement containers than the number required to be provided by Contractor, Contractor shall supply and deliver containers at Contractor's actual cost, which may include reasonable transportation and administration expenses. The City and Contractor shall meet and discuss the financial impact the providing of additional replacement containers has on Contractor and shall jointly determine if Contractor shall be reimbursed for providing additional replacement containers.

Contractor shall notify the City if an individual Customer has required replacement of a container more than twice in a twelve (12) consecutive month period. The City and Contractor shall consult with each other (and with the Customer if deemed appropriate) to develop an appropriate response to the situation.

Containers for used motor oil collection shall be distributed to residents within one week of request. When Contractor collects full or partially full containers from a household, Contractor shall leave the same number of empty containers at the point of collection or inside the empty recycling container.

4.4 Multi-Family Dwelling Collection and Service Requirements

For the purposes of this Article, "Multi-Family Collection Service" shall mean collection containers are present and properly labeled and Contractor attempts to provide weekly service from the designated service location.

4.4.1 Frequency of Collection. Contractor shall provide, at a minimum, weekly collection to participating Multi-Family Dwellings. Contractor shall be allowed, upon prior approval of the City, to collect less than weekly from Multi-Family Dwellings identified by Contractor as requesting such service. The City reserves the right to prorate payment to Contractor to reflect reduced collection frequency.

4.4.2 Material Preparation Requirements.

- a. Multi-Family Dwellings will be required to place commingled Targeted Recyclable Materials in a recycling container provided by Contractor.
- b. Corrugated cardboard is required to be flattened and no larger than 3' by 3' and be set out (1) stacked or bundled next to a recycling container, (2) or in the recycling container provided by Contractor. Contractor is obligated to collect all corrugated cardboard meeting the dimensional requirements that is set out for collection.
- c. Used motor oil is required to be placed in a Contractor provided container and placed next to the recycling container. Contractor may decline collection of oil in incorrect containers. Contractor shall decline collection of contaminated used motor oil or any other fluids that have been set out for collection. Contractor may

decline collection of spilled oil within the property confines and shall notify the building owner/manager of the reason why collection service was declined.

- d. Used motor oil filters are required to be placed in a Contractor provided container and placed next to the recycling container. Contractor may decline collection of oil filters in incorrect containers.

4.4.3 Collection Time and Location. Collection from Multi-Family Dwellings shall occur between the hours of 6:00 a.m. and 6:00 p.m., Monday through Saturday, regardless of weather conditions. The Director may authorize an extension of hours on a route-by-route basis.

The default collection location from Multi-Family Dwellings shall be designated areas within the property confines (i.e., on-premises or 'backyard' collection) with prior consent of the building owner/manager, and in compliance with any applicable City codes and ordinances. Collection may be from an alternate location (e.g., curbside) with prior consent of the building owner/manager.

4.4.4 Material Handling. Contractor shall collect all Targeted Recyclable Material in, overflowing, or adjacent to recycling containers and when material has been scattered within five feet of the container due to scavenging or adverse weather conditions.

Contractor is authorized to decline collection of Targeted Recyclable Materials mixed with Solid Waste, Hazardous Waste, or not prepared in accordance with Program requirements. If Contractor declines collection, Contractor shall affix a note to or place a note within the recycling container explaining why collection service was declined. Setouts improperly prepared shall be cleaned-up and taken by the driver the first time, with Program literature left behind which references the specific problem. Contractor's drivers shall reject setouts from Multi-Family Dwellings that continue to improperly prepare setouts. Rejected setouts shall be tagged with a brightly colored tag visible to the building owner/manager and anyone viewing the setout. Contractor's driver will immediately report the address and reason(s) for rejection to Contractor's dispatcher and customer service representative by two-way radio. At the end of the business day, Contractor shall mail an explanation of the setout rejection and Program literature to the building owner/manager. Should the building owner/manager call Contractor's office before the end of the business day, a record of the rejection should be on file. Contractor's customer service staff shall explain the problem from an informed perspective, and, where necessary and practical, make the concession of having the driver return to get a setout that the building owner/manager has properly prepared.

The City and Contractor shall review any problems encountered by Contractor because of rejected setouts and shall mutually agree upon proposed solutions. If necessary, the City and Contractor shall meet with the holder of the Solid Waste Franchise Agreement to arrange a process/procedure for the collection of rejected setouts as Solid Waste.

If any used motor oil is spilled at curbside, by either resident, building owner/manager or Contractor's employee, or within the property confines by Contractor's employee, Contractor shall use appropriate absorbent and/or other materials to clean up the spill.

4.4.5 Recycling Containers. Contractor shall be solely responsible for purchase and distribution of new and/or replacement recycling containers. Style, color, size, manufacturer, and copy to be printed or embossed on the containers shall be subject to approval by the City.

Multi-Family Dwellings shall be provided recycling containers with adequate capacity to store deposited Targeted Recyclable Materials for a minimum collection frequency of once per week. The multi-family recycling containers to be used for storage and collection of Targeted Recyclable Materials shall be subject to approval by the City. Multi-family recycling containers shall be properly maintained, including washing of interior and exterior when necessary or as directed by the Director. Contractor shall retain ownership of all multi-family recycling containers.

Upon Agreement end or termination, Contractor shall remove all multi-family recycling containers within four weeks unless other arrangements are made with the individual Multi-Family Dwelling or buildings or with the City.

Used motor oil containers for Multi-Family Dwellings shall be four-quart containers or larger. The collection, handling, and transportation of used motor oil containers shall be in compliance with all applicable laws and regulations.

The number and size of community recycling containers to be provided to the Multi-Family Dwellings shall have adequate capacity to service all eligible units. If the City determines additional containers are required, Contractor shall supply and deliver required containers within one week. Location of the community recycling containers shall be coordinated with the building owner/manager.

4.4.6 Replacement of Recycling Containers. Contractor shall be required to provide all necessary replacement recycling containers for Multi-Family Dwellings, except that upon prior notice to and approval from the City, Contractor may cease service at a Multi-Family Dwelling if containers provided to the Multi-Family Dwelling are chronically damaged or destroyed.

4.4.7 Collection Service Audits. The City may conduct collection service audits by means of sampling studies, route surveys, or other means. The City and Contractor shall review the methodology to be used for conducting the collection service audit, but the final decision on the methodology to be employed rests solely with the City. Contractor shall make available to the City, or to the authorized agent of the City, access to all operations as necessary to conduct service audits, including but not limited to allowing the City staff or authorized agents to ride along on collection vehicles, and access to all Multi-Family Dwellings serviced. Contractor shall designate a representative to participate in the collection service audit on its behalf.

The City may conduct collection service audits twice per calendar year. In the event the City determines through service audits that greater than 5% of billed Multi-Family Dwelling units audited are not being provided with Multi-Family Collection Service, liquidated damages may be assessed as set forth in Section 13.2.4.

In the event a collection service audit determines more than 15% of Multi-Family Dwelling units audited are not being provided with Multi-Family Collection Service, the frequency of service audits and liquidated damages assessment may be increased to four times per year. The increased frequency of service audits shall continue until it is determined that the percentage of Multi-Family Dwelling units not being provided with Multi-Family Collection Service has dropped below 15%.

4.4.8 Alignment of Service and Billing. It is the intention of the City to compensate Contractor for all Multi-Family Dwellings receiving Multi-Family Collection Service, and that Multi-Family Collection Service will be provided to all Multi-Family Dwellings for which the City is invoiced monthly.

4.4.8.1 Adding New Multi-Family Dwellings. In order to add new Multi-Family Dwellings to service and billing invoice lists, Contractor shall:

- a. Arrange with and obtain approval from building owner/manager for establishment of service at an agreed-upon collection location. Contractor shall inform the building owner/manager that the default service location is on-premises collection at no additional cost.
- b. Arrange with and obtain approval from building owner/manager for delivery of a specified number of recycling containers. Collection service shall be provided within two weeks of Program acceptance by the building owner/manager.
- c. Confirm receipt by Customer of recycling containers.
- d. Concurrent with delivery of the recycling containers, Contractor shall deliver City-approved Program information, including but not limited to printed materials.

4.4.8.2 Removing Multi-Family Dwellings. In the event it is determined through collection service audits or other means that Contractor is not providing Multi-Family Collection Service to a Multi-Family Dwelling, then upon notice from the City, Contractor shall remove the Multi-Family Dwelling from its multi-family billing/service list for the next monthly billing period. The Multi-Family Dwelling can only be reinstated to

active billing/service status after Multi-Family Collection Service has been re-established, per the requirements of Section 4.4.8.1.

4.5 City Facility Collection and Service Requirements.

4.5.1 Frequency of Collection. Contractor shall provide, at a minimum, weekly collection at the City Facilities, listed in Attachment A, except that upon mutual prior agreement of the City and Contractor, certain City Facilities may receive “on-call”, less-than-weekly collection. The City may reasonably modify this list by sending a letter to Contractor indicating the facility and type and frequency of service required. Contractor shall commence service within five (5) working days of a request from the City.

4.5.2 Material Preparation Requirements. City Facilities shall follow the material preparation requirements pursuant to Sections 4.3.2 or 4.4.2 depending on the type of recycling containers required to adequately service the facility.

4.5.3 Material Handling. Contractor shall collect all Targeted Recyclable Material in, overflowing, or adjacent to recycling containers when material has been scattered within five feet of the bin due to scavenging or adverse weather conditions.

Contractor is authorized to decline collection of Targeted Recyclable Materials mixed with Solid Waste, Hazardous Waste, or not prepared in accordance with Program requirements. If Contractor declines collection, Contractor shall affix a note to or place a note within the recycling container explaining why collection service was declined. Setouts improperly prepared shall be cleaned-up and taken by the driver the first time, with Program literature left behind which references the specific problem. Contractor’s drivers shall reject setouts from City Facilities that continue to improperly prepare setouts. Rejected setouts will be tagged with a brightly colored tag visible to the City Facility and anyone viewing the setout. Contractor’s drivers shall immediately report the address and reason(s) for rejection to Contractor’s dispatcher and customer service representative by two-way radio. At the end of the business day, Contractor will mail an explanation of the setout rejection and Program literature to the City Facility. Should the City Facility call Contractor’s office before the end of the business day, a record of the rejection should be on file. Contractor’s customer service staff shall explain the problem from an informed perspective, and, where necessary and practical, make the concession of having the driver return to get a setout that the City Facility has properly repaired.

The City and Contractor shall review any problems encountered by Contractor because of rejected setouts and shall mutually agree upon proposed solutions. If necessary, the City and Contractor shall meet with the holder of the Solid Waste Franchise Agreement to arrange a process/procedure for the collection of rejected setouts as Solid Waste.

4.5.4 Recycling Containers. Contractor shall be solely responsible for purchase and distribution of new and/or replacement recycling containers. Style, color, size, manufacturer, and copy to be printed or embossed on the containers shall be subject to approval by the City.

City Facilities shall be provided recycling containers with adequate capacity to store deposited Recyclables for a minimum collection frequency of once per week. The City Facility recycling containers to be used for storage and collection of Recyclables shall be subject to approval by the City. City Facility recycling containers shall be properly maintained, including washing of interior and exterior when necessary or as directed by the Director. Contractor shall retain ownership of all City Facility recycling containers. If the City determines additional containers are required, Contractor shall supply and deliver required containers within one week. Location of the recycling containers shall be coordinated with the City.

Upon Agreement termination, Contractor shall remove all City Facility recycling containers within four weeks unless other arrangements are made with the City.

4.5.5 Replacement of Recycling Containers. Contractor shall be required to provide all necessary replacement recycling containers for City Facilities.

4.6 Small Business Collection and Service Requirements.

4.6.1 Frequency of Collection. Contractor shall provide, at a minimum, weekly collection to participating Small Businesses. Contractor may provide service on the same day of the week as nearby residential collection or may establish a separate collection schedule for Small Businesses. Collection schedules shall be provided to the City, in writing.

4.6.2 Small Business Material Preparation Requirements.

- a. Small Businesses will be required to place commingled Targeted Recyclable Materials in a clear plastic 40-gallon bag or a recycling container(s) provided by Contractor.
- b. Corrugated cardboard is required to be flattened and no larger than 3' by 3' and be set out (1) stacked or bundled next to a recycling container, (2) or in the recycling container provided by Contractor.
- c. Used Motor Oil and used motor oil filter collection services shall not be offered to Small Businesses.

4.6.3 Minimum Amounts and Setouts. There shall be no minimum level of recycling generation before a Small Business may participate in the Program.

All recycling containers used by Small Businesses to participate in this Program must be placed at the curb for collection. Contractor must provide collection service to subscribing Small Businesses as described in this Section, and must service every Small Business in the Service Area that wishes to subscribe. Two or more Small Businesses may share recycling container(s) service.

4.6.4 Handling and Delivery. Contractor shall collect all Targeted Recyclable Material in, overflowing, or adjacent to recycling containers and when material has been scattered within five feet of the recycling container due to scavenging or adverse weather conditions.

Contractor is authorized to decline collection of Targeted Recyclable Materials mixed with Solid Waste, Hazardous Waste, or not prepared in accordance with Program requirements. If Contractor declines collection, Contractor shall affix a note to or place a note within the recycling container explaining why collection service was declined. Setouts improperly prepared will be cleaned-up and taken by the driver the first time, with Program literature left behind which references the specific problem. Contractor's drivers shall reject setouts from Small Businesses that continue to improperly prepare setouts. Rejected setouts will be tagged with a brightly colored tag visible to the Small Business and anyone viewing the setout. Contractor's drivers will immediately report the address and reason(s) for rejection to Contractor's dispatcher and customer service representative by two-way radio. At the end of the business day, Contractor shall mail an explanation of the setout rejection and Program literature to the Small Business. Should the Small Business call Contractor's office before the end of the business day, a record of the rejection should be on file. Contractor's customer service staff shall explain the problem from an informed perspective, and, where necessary and practical, make the concession of having the driver return to get a setout that has been properly repaired.

The City and Contractor shall review any problems encountered by Contractor because of rejected setouts and shall mutually agree upon proposed solutions. If necessary, the City and Contractor shall meet with the holder of the Solid Waste Franchise Agreement to arrange a process/procedure for the collection of rejected setouts as Solid Waste.

In the event of chronic incorrect setouts, Contractor may end service to a Small Business with prior notification. If the Small Businesses pre-paid for Program services, Contractor must issue a pro-rated refund for the remaining amount of service.

4.6.5 Small Business Recycling Containers. For the purpose of providing service to subscribing Small Businesses, Contractor will use as the "recycling container" a clear plastic bag of sufficient capacity to line a 40-gallon container. Alternatively, the Small Business may choose to receive collection service in 18-gallon recycling bins or 64 or 96-gallon carts similar to containers used for Single Family Dwellings and/or Multi-Family Dwellings. In such case, the Small Business must use Contractor-owned containers for an additional charge. All carts shall be clearly marked "Recycling Only". Contractor may provide carts with a locking mechanism to prevent the theft of Targeted

Recyclable Materials or filling with Solid Waste. Contractor shall be solely responsible for purchase and distribution of new recycling containers. Style, color, size, manufacturer, and copy to be printed or embossed on the containers shall be subject to approval by the City. All newly subscribing Small Businesses shall be provided recycling containers and collection service within one week of the service request or the next scheduled service day, whichever is later, during the duration of the Program.

4.6.6 Replacement of Recycling Containers. In the event recycling containers are lost, stolen, damaged or destroyed, Contractor shall be responsible for providing replacement containers within one week of the request by the Small Business or the City. Contractor shall be solely responsible for the purchase and distribution of replacement containers. During the Service Term of this Agreement, Contractor shall be responsible for providing one replacement container per Small Business for the subscribed level of service. Should a participating Small Business require the replacement of more than one lost, stolen, damaged or destroyed containers during the Service Term, Contractor may charge the Small Business for additional replacement containers at Contractor's actual cost, which may include reasonable transportation and administration expenses.

4.6.7 Small Business Rates. All costs of the plastic bag service (including but not limited to bag purchase, delivery and collection) are included in the bag subscription rate for Small Businesses. During year one of the Agreement, Small Business using bag subscription shall pay the rate(s) set forth in Attachment F; the City is not responsible for payment. Bag subscribers may continue to set out any remaining bags after the subscription period has expired. A Contractor customer service representative should contact non-renewing bag subscribers to determine if they want to continue in the program and/or if they have any bags remaining.

Small Businesses receiving 18 gallon recycling bin or 64 or 96-gallon cart service shall pay the rate(s) set forth in Attachment F; the City is not responsible for such payment. The per month rate(s) includes the collection service, delivery and rental of the recycling container used for the service described in Section 4.6.2.

The rates in this Section shall be published, apply to all requesting Small Businesses, and be the maximum rate charged to Small Businesses by Contractor for the service; Contractor may publish lower rates upon prior notification to, and agreement from, the City. Any other rates (e.g., recycling container purchase rates) for Small Businesses shall be agreed to in advance by the City and Contractor, shall be published, shall apply to all requesting Small Businesses, and shall be the maximum rate charged to Small Businesses by Contractor for that service, and shall be established by the City and Contractor by August 1, 2004; it is the City and Contractor's intention that such rates will not exceed the actual cost to provide the specified service, which may include reasonable charges for transportation, administration and profit.

Rates shall be paid directly to Contractor by the Small Business, property owner, or their agent. Contractor shall establish regular billing protocol, subject to the City's approval. The City may, at its option, subsidize the Small Business rates. Adjustments

to the Small Business rates shall be made in a manner similar to that described in Section 12.3, and an increase to the Small Business rates shall not be for a percentage amount greater than that established for the Household Rate as determined in Section 12.3.

If Contractor generates bills or invoices as part of Small Business service, the City will be allowed to include inserts/information. If Contractor informs the City in advance that inclusion of materials raises postage or increases materially the work or expense associated with the preparation of mailing items, and the City still wishes to include the inserts/information, the City shall reimburse Contractor the incremental cost associated with the City's materials.

4.6.8 Right to Recycle. Targeted Recyclable Materials set out by Small Businesses for collection by Contractor are to be collected by Contractor. The City will make reasonable efforts to reduce scavenging; however, the City and Contractor acknowledge that in some areas, scavengers may remove a substantial portion of the Recyclable Materials. Provisions of Section 4.8 apply herein.

Nothing in this Agreement shall obligate a Small Business to use Contractor as their recycling service provider, for some or all materials. Small Businesses may choose Contractor for some Recyclables and other service providers for other Recyclable Materials, provided the setout method is distinct. Nothing in this Agreement shall limit the right of any person to donate, sell, transport, pay for the removal of, or otherwise dispose of their own Recyclables or organic recyclable material provided that such activity is in accordance with the provisions of the Oakland Municipal Code.

4.6.9 Collection Method and Time. Contractor shall be allowed to mix materials from Single-Family, City Facility and Small Business sources in the same collection vehicle. Contractor is not required but shall make every attempt to collect Recyclable Materials from Small Businesses located in the Chinatown, Grand Avenue, Lakeshore, Montclair, Piedmont Avenue, Rockridge and Temescal business districts between the hours of 6:00 a.m. and 10:00 a.m. Tuesday through Friday. Contractor at its option may add additional business districts.

4.6.10 Public Education. Public education materials used by Contractor will be developed and/or provided by the City. The City may direct Contractor to provide Small Business public education materials in a language other than English. In such event, the City shall pay for the preparation and translation of said materials and Contractor shall incur all costs for the distribution of said materials. The City affirms that when it receives calls on the City's recycling hotline from eligible Small Businesses, it will promote Contractor's Small Business recycling service.

Contractor shall staff tables and promote its Small Business recycling service at a minimum of two events per year where significant numbers of Oakland businesses are in attendance. Examples include the Art and Soul Festival and the Chamber of Commerce's Small Business Trade Fair. Contractor shall notify the City of the events it intends to

attend and the City in its sole discretion shall determine if the selected event satisfies the requirements of this Section.

4.7 **Changes in Scope of Work**

4.7.1 General. The 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 or provided. Contractor shall promptly and cooperatively comply with such directions and the Household Rate 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 rights. If a service within the scope of the Agreement is discontinued at the City's direction pursuant to this section, the City shall not allow a third party to perform said services. If the City deletes services, it will take into account when adjusting the Household Rate not only Contractor's reduced operating costs, but also the impact of capital equipment no longer fully utilized. Contractor must provide financial information showing the impact of service changes on capital equipment.

4.7.2 New Programs. Pilot programs and innovative services that may entail new collection methods or additional Targeted Recyclable Materials are included among the kinds of changes the City may direct. Before directing a change in service that would affect Contractor's costs by more than \$25,000 per year, the 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 the 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 effect on the Household Rate, 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 the 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 \$25,000 per year, Contractor shall implement the change in accordance with a schedule directed by the City and the Household Rate shall be adjusted accordingly. If a change in service will affect Contractor's costs by more than \$25,000 per year, the City will consider Contractor's report as provided under Section 4.7.2. If the parties agree on the appropriate amount by which the Household Rate should be adjusted, Contractor shall implement the change in accordance with the schedule directed by City.

4.7.4 New Technology. In the event that technological advancements in the collection, transportation, and Processing of Targeted Recyclable Materials 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 Household Rate 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 a new Household Rate shall be mutually agreed upon and established. Contractor shall retain the ability to propose changes to the City for the Program for the purpose of maximizing efficiency. Said changes will not be implemented without the written approval of the City.

4.8 Ownership of Recyclables. Ownership and the right to possession of Targeted Recyclable Materials placed in containers or bundles for collection, or placed at curbside or the designated recycling collection point, shall transfer directly from the Customer to Contractor, by operation of law. Contractor's arrangements with the 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 Targeted Recyclable Materials which are set out for collection shall pass to Contractor at the time it is set-out by the Customer with the exception of used motor oil whose ownership shall pass to the Contractor at the time of collection. Contractor is not responsible for any materials refused for collection per Sections 4.3.4, 4.4.4, 4.5.3, and 4.6.4.

Subject to Section 17.18, the City shall make a reasonable effort to minimize scavenging by enforcing the State of California's Public Resources Code Sections 41950 and 41951, which makes it unlawful to remove Recyclable Materials that have been set out for collection by the Customers for an authorized recycling collector.

Contractor and its representatives, agents, attorneys, heirs, administrators, transferees, assigns, executors, and successors (collectively called "Claimants") hereby unconditionally agree to release, acquit, remise, hold harmless and forever discharges the City, its elected and appointed officials, officers, agents, employees, and members of commissions (collectively called "City"), from any and all claims, actions, cause of action, damages, demands, injuries, attorneys' fees and costs, and liability, either at law or in equity or of any kind, nature or description, whether presently known or unknown, or whether presently existent or nonexistent, which Claimants has had or now has or may have in the future against the City arising out of or based upon the City's efforts to minimize scavenging by enforcing Sections 41950 and 41951 of the California Public Resources Code ("Enforcement Efforts"). Claimants specifically acknowledges that this Agreement extends to and includes all known, unsuspected, unanticipated or undisclosed claims, actions, or causes of action regarding the Enforcement Efforts.

Claimants expressly waives the provisions of Section 1542 of the Civil Code of California which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor."

Claimants, upon advice of counsel, waive and relinquish, now and forever, any and all rights it has or may have under Section 1542 of the Civil Code to the fullest extent allowed by law.

Claimants agree and represent that it fully understands the statutory language of Civil Code Section 1542 and that this release and waiver applies only to the ownership of recyclables.

Contractor Initial Here _____ City Initial Here _____

ARTICLE 5.00 -- HAZARDOUS WASTE

5.1 Hazardous 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 of Hazardous Waste and (ii) the obligation of each Customer to provide for the proper handling and disposition of Hazardous Waste. Contractor shall refuse to collect or accept any Hazardous Waste. The Contractor shall notify the Customer in writing why the collection was not made and inform the Customer to arrange for proper disposal. Contractor shall, prior to leaving the location, leave a tag at least 2"x 6" which lists the telephone number for the Alameda County Household Hazardous Waste Program.

5.1.3 Contractor to Segregate and Dispose. Contractor shall implement procedures to identify and reject materials delivered to its facilities which are Hazardous 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 which is identified after waste has been accepted or loaded, and shall not further process or transport such Hazardous 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 that is collected or received by 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 third party generators.

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. The City shall have access to such operating and training manuals. 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 are at all times fully trained. Contractor shall maintain documentation that 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 third party generators. 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 that 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.

ARTICLE 6.00 -- PROGRAM EQUIPMENT

Contractor is responsible for establishing collection, Processing, handling and marketing arrangements for the Targeted Recyclable Materials. Equipment utilized for collection, Processing and handling of materials may be owned or leased by Contractor or the services may be subcontracted out.

6.1 Collection Vehicle Specifications, Maintenance and Appearance. Equipment shall be of the highest quality in order to produce the quality of work required. Suitability shall be determined by the Director. The Director shall have the right, but not the obligation, to inspect Contractor's equipment and maintenance records at any time with 24 hours notice; if found lacking, the equipment shall be removed from the Program until defects are remedied. Contractor shall be responsible for providing replacement equipment at no extra cost to the City while defects are remedied. Any equipment more than one (1) year old at the Effective Date of this Agreement shall not be used for collection, except during the period between the Effective Date and completion of the implementation plan set forth in Attachment D. No vehicle older than the 2003 model year shall be used for collection from Single-Family, Multi-Family, City Facilities or Small Businesses during the Service Term or Extended Term, however, if

Contractor establishes separate collection routes for Multi-Family Dwellings, no vehicle older than the 2004 model year shall be used for collection on said routes. A collection vehicle used principally for back-up purposes shall not be more than five (5) years old at the Effective Date of this Agreement. Contractor and all applicable subcontractors shall maintain a maintenance log for each piece of equipment and shall make such log available for City inspection upon request.

All collection equipment shall have appropriate safety markings consisting of all highway lighting, flashing and warning lights, clearance lights, and warning flags, all in accordance with the State Vehicle Code and subject to approval by the Director. Equipment shall be maintained in safe, clean, and sanitary condition at all times. All parts and systems of the collection equipment shall operate properly and be maintained in a condition satisfactory to the Director. Any equipment not meeting these standards shall not be used in this Program.

Contractor's name, phone number and vehicle number shall be visibly displayed on its vehicles, in letters and figures at least four (4) inches high. The vehicle number shall be displayed on both the front and rear of the vehicle. Vehicle's color(s) and paint schemes are subject to the approval of the Director. The City's Program logo shall be prominently displayed of a size and type style to be approved by the Director. Vehicles shall be painted frequently enough to maintain a positive image as determined by the City. In the event Contractor must use other collection vehicles on a temporary basis for the services to be performed under this Agreement, Contractor must affix temporary signage to show the City's Program logo and Contractor's customer service telephone number.

All vehicles used by Contractor in providing services shall be registered with the Department of Motor Vehicles (DMV) of the State of California and such registration must be current at all times. Failure to maintain current DMV registration at all times shall subject Contractor to liquidated damages as set forth in Section 13.2.4. Vehicles shall be kept clean and in good repair; and, loads shall be kept covered at all times except when material is actually being loaded or unloaded or when the vehicles are moving along a collection route while providing collection service. The collection equipment must be designed to operate while on the route in such a manner as not to allow materials to be littered.

6.2 Collection Vehicle Noise Levels. The noise level generated by collection vehicles shall not exceed seventy-five (75) decibels at a distance of twenty-five (25) feet from the collection vehicle measured at an elevation of five (5) feet above the ground level.

6.3 Collection Vehicle Drivers/Driver's Helpers Uniform. All collection vehicle drivers and driver's helpers shall wear uniforms, consisting of shirts and, optionally, caps, which identify the workers as being employed by the Contractor and associated with the Program.

6.4 Collection Vehicle Global Positioning System. Contractor shall provide and maintain at its expense global positioning equipment on all collection vehicles during the Service Term and any Extended Term. Suitability of said equipment shall be subject to reasonable requirements of the Director and shall be of a quality to provide reports indicating the time and location of all vehicles while on the route. The global positioning system selected by Contractor shall be web-based and the City shall be provided a password to access the system to obtain

information to respond to customer inquiries. The City shall not utilize its access to Contractor's global positioning system to obtain information to assess liquidated damages where no Customer complaint initiated the system inquiry or to punitively, arbitrarily or unreasonably assess liquidated damages when utilizing the system to review a complaint driven inquiry. Contractor shall include City staff in training classes offered by the company providing the global positioning system.

6.5 Collection Vehicle Financing. Contractor shall be solely responsible for financing the acquisition or leasing of all collection vehicles used in the Program. The City will support Contractor's efforts to obtain financing for vehicles from the California Pollution Control Financing Authority and grants from the Bay Area Air Quality Management District. The City shall have no obligation whatsoever to repay loans or grants obtained by Contractor by, with or through the assistance of the City. Contractor shall indemnify and hold harmless the Indemnitees from all Claims pursuant to the provisions of Article 16.00.

6.6 Vehicle Inventory. Contractor shall furnish the City with an inventory of vehicles used by Contractor for collection, handling or transporting of Recyclable Materials two (2) weeks prior to the Service Term. Contractor shall update the inventory list provided to the City annually, commencing from the Effective Date of this Agreement or at the City's request. Such inventory shall indicate each vehicle by number, DMV license number, expiration date of vehicle registration, the model year of the chassis and body, the type and capacity of each vehicle used by Contractor, the use of each vehicle, the date of acquisition, the cost of each vehicle and the depreciation schedule for each vehicle.

6.7 Equipment Inventory. Contractor shall furnish the City with an inventory of major equipment used by Contractor for the Processing or handling of Recyclable Materials two (2) weeks prior to the Service Term. Contractor shall update the inventory list provided to the City annually, commencing from the Effective Date of this Agreement or at the City's request. Such inventory shall indicate the type of equipment, the age, date of acquisition.

ARTICLE 7.00 -- PROCESSING REQUIREMENTS

A facility for Processing Targeted Recyclable Materials collected in the Program shall be capable of accepting the collected materials and Processing them to the degree necessary to be marketable at reasonable prices. Pursuant to Article 11.00 Contractor shall maintain adequate procedures, records and controls to ensure separate and clearly identifiable reporting of the materials collected and processed under this Agreement.

7.1 Processing Facility Location and Permits. Contractor shall be responsible to acquire all necessary permits and environmental review and clearance for any and all Processing facilities used to fulfill the obligations of this Agreement pursuant to Section 17.32. This Agreement does not authorize or waive any permit requirements. Contractor currently operates two processing facilities located in Oakland. Contractor shall continue to process all Program materials at its Oakland facilities throughout the Agreement term. Should Contractor desire to process collected Recyclables at a facility outside of Oakland, Contractor shall make such request in writing and must receive written approval from the City.

7.1.1 Processing Facility's Relationship to Neighborhood. To the extent Contractor uses existing or any new facilities located in Oakland for the storage of vehicles and the Processing of the Recyclables collected pursuant to this Agreement, Contractor shall comply with Attachment G. Contractor shall not use such facilities without all of the necessary permits being approved, except if the use is allowed by zoning regulations or is exempt under any applicable laws, including but not limited to any grandfather laws. Pursuant to Section 12.6, Contractor shall accompany the City's Contract Manager on a bi-monthly tour of the facilities during the first year of this Agreement and at least semi-annually thereafter to ensure Contractor's compliance with Attachment G.

7.2 Processing System Capacity. The system shall have sufficient capacity to receive and process, within five (5) working days, all materials collected in one week. There shall be sufficient space at the Processing facilities to store at least one week's accumulation of materials in the event of equipment failure or downtime, or Contractor shall submit to the City an acceptable contingency plan.

7.3 Processing Residue. If Contractor's Processing facility is located within the Oakland City limits, all Processing Residue generated from the Processing of Targeted Recyclable Materials collected through this Program shall be handled and disposed of in accordance with the Oakland Municipal Code, Sections 8.28, 8.28.060, 8.28.070, and 8.28.100, and with Contractor's Conditional Use Permits. Nothing in this Agreement prohibits Contractor from self-hauling Processing Residue to a permitted disposal facility. Contractor is responsible for all costs associated with this requirement.

Contractor shall return collected Targeted Recyclable Materials to the economic mainstream in the form of commodities, and minimize the amount of Processing Residue. Contractor shall report to the City pursuant to Section 11.1.c all shipments of Processing Residue.

7.4 Disposal Prohibition. Except for Processing Residue, all Targeted Recyclable Materials collected through this Program shall be reused or processed and then returned to the economic mainstream in the form of commodities, and may not be used for disposal or alternative daily cover at landfills, transformation, nor any use which would impact the City's compliance under AB 939 and/or the Alameda County Recycling Initiative (Measure D) that establishes a goal of 75% waste reduction going to landfills by 2010 without express written authorization from the Director.

If Contractor is unable to sell specific collected and processed Recyclable materials, Contractor may request authorization from the Director to dispose of said materials as Processing Residue. Director shall notify Contractor within ten (10) working days if authorization will be granted.

If Contractor or its designee dispose of Targeted Recyclable Materials without the prior written approval from the City, the City shall have the right to terminate this Agreement as provided in Section 13.2.1, or to assess liquidated damages as provided in Section 13.2.4 of this Agreement.

ARTICLE 8.00 – FLOW CONTROL OF PROCESSED MATERIAL

The City shall retain the right to redirect processed material to specific markets or end-users located within the City or the boundaries of Oakland/Berkeley's Recycling Market Development Zone (RMDZ). Contractor shall redirect materials subject to all the following conditions:

- a. The City shall give at least ninety (90) days prior written notice of any material redirection;
- b. The redirected material may represent up to one hundred percent (100%), by processed weight, of each commodity collected;
- c. The material redirection shall continue until Agreement termination or until the City gives at least thirty (30) days prior written notice of discontinuation;
- d. Contractor shall not enter into any agreements for the supply of materials collected in the Program that would preclude the City's ability to redirect said material unless otherwise authorized by the Director.

Sale pricing, terms, product quality and specifications are to be mutually agreed upon by Contractor and buyer of redirected materials prior to sale, and be consistent with market and industry standards. Any sales or quality claims shall be handled in a manner consistent with market and industry standards.

ARTICLE 9.00 – CONTRACTOR'S PUBLIC EDUCATION REQUIREMENTS

For the purposes of this article, "Public Education" shall mean any information (whether written or otherwise) directed by Contractor to recipients or potential recipients of Residential Recycling Services regarding the programs and services provided under this Agreement and shall be subject to the prior review and approval of the City. The City shall be financially responsible for the preparation and the content of Public Education materials used city-wide to promote Single Family Dwelling, Multi-Family Dwelling, Small Business, City Facilities recycling and single stream recycling. Contractor shall provide input on the preparation of Public Education materials specific to its Service Area and its implementation plan. The number and type of materials prepared by the City for distribution by Contractor, and the expenditures to produce such materials, shall be within the sole discretion of the City.

Contractor's public awareness campaign shall encourage the maximum level of citizen recycling, Program participation, and waste reduction. Public awareness campaign activities

must emphasize all materials to be collected and directions for preparation of materials. At a minimum, the following Public Education activities are required of Contractor:

9.1 Public Education Budget. Contractor shall be required to allocate or spend \$25,000 per calendar year on Program-related Public Education activities that have received prior written approval from the City. The City and Contractor may mutually agree to perform joint Public Education activities using all or some of the annual Public Education budget. Any unspent funds at the end of the calendar year shall be deducted from Contractor's monthly payment pursuant to Article 12.00. Upon request by Contractor, the City may, at its option, authorize Contractor to carryforward up to \$12,500 of unspent funds to the following calendar year.

9.2 Public Education Activity Requirements.

- a. By September 1st of each year, commencing 2005, Contractor must supply a Public Education plan for the following year. The City shall review and respond to the proposal within 45 days. Implementation of the plan would begin on January 1st of each year.
- b. Contractor shall not perform any work on Public Education without prior written approval from the City. All materials shall be submitted in writing for review and approval. Written authorization by the City is required prior to final production of any Public Education materials.
- c. All Public Education materials must be printed on 100% recycled paper with at least 50% post consumer recycled content with soy based (or other non-toxic) inks.
- d. All Public Education materials must include the City's Oakland Recycles logo and the City's recycling hotline phone number.
- e. All trucks must include the City's Oakland Recycles logo and Contractor's customer service phone number.
- f. All Public Education materials must include four languages whenever possible and/or needed (the City will make determination) and materials must be made accessible to those with disabilities, in accordance with all applicable federal, state, and local laws and regulations, at Contractor's sole cost and expense.
- g. All new collection vehicles shall include space for outdoor poster advertising to be utilized by the City.
- h. The City shall oversee all press activities including press releases, press conferences, press kits, press packets and general press inquiries regarding the Program.

- i. Public relations activities cannot be applied to the Public Education budget.
- j. All public relations, press and public outreach activities that involve the Program must have prior approval from the City whether or not they are being paid for from the Public Education budget.
- k. Contractor shall execute appropriate documents to assign to the City the copyright to works created pursuant to this Agreement if so requested by the City.

Examples of Public Education activities that may be funded from the Public Education budget:

Materials developed to respond and correct any sector or neighborhood specific Public Education problems (i.e. collection day confusion);

Container flyer distribution for all Single Family Dwellings up to twice per year with the distribution to last for two consecutive weeks;

Posting of up to one poster per year at each Multi-Family recycling container location;

Multi-Family instructional information distributed to property owners/managers to be included with Multi-Family Dwelling rental agreements; and

Contribution to schools or other non-profit recycling Public Education projects.

Activities that shall not qualify as Public Education expenditures:

All activities associated with operational needs such as but not limited to, uniforms, uniform maintenance, database management, recycling container delivery, customer support;

All activities which are solely self promotion such as signage promoting only Contractor's name; and

Tags for incorrect setouts.

9.3 Multi-Family Dwelling Outreach Program. The outreach program shall be sufficient to maximize participation by buildings residents. At a minimum, the following is required of Contractor:

- a. Written notification of the availability of the service mailed to the building owner/s and managers of all non-participating dwellings annually and at least one follow-up phone or person-to-person contact. Contractor shall complete initial notification by April 1, 2005.

- b. Annually, Contractor shall be responsible for the distribution of the City provided public outreach Program materials at the central collection location with information relating to, but not limited to, minimization of material Contaminants, minimization of scavenging, and other information to maximize material diversion.

ARTICLE 10.00 -- PUBLIC ACCESS TO CONTRACTOR

10.1 Office Facilities. Contractor shall establish and maintain a principal office in Oakland. Regular office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. Monday through Friday, except holidays. If Contractor is required to provide regular collection service on Saturday because of a holiday during the week, Contractor shall maintain regular weekday office hours. During the implementation period of this Agreement, Contractor shall keep the office open until 6:00 p.m. Contractor may provide Saturday or extended office hours beyond 6:00 p.m. at its option. A representative of Contractor shall be available during the stated office hours for communication with the City's Director and other City officials.

10.2 Telephone Access. Contractor shall provide and maintain a customer service/complaint telephone system of sufficient capacity with multi-lingual capability. Contractor shall ensure sufficient staffing of a customer service/complaint telephone system during the regular office hours set forth in Section 10.1. Contractor shall maintain a record of all customer service inquiries/complaints as described in Section 11.1.

Contractor shall make available an answering machine or answering service for customer service/complaint calls outside of normal office hours. All such calls shall be responded to and logged on the following workday.

10.3 Customer Information System. Contractor shall utilize a Customer information system with software applications capable of documenting all correspondence between Contractor and Customers, and any other applicable service or Customer contact information. The system shall have, at minimum, the following data fields:

- a. Date and time of Customer correspondence (e.g., phone call, email)
- b. Customer's name and contact information (phone numbers and email address)
- c. Service address
- d. Service location information including;
 - 1. Number of units
 - 2. Number of recycling containers
 - 3. Collection service day
 - 4. Route number
 - 5. Paid premium backyard service status
 - 6. Curbside exempt status
- e. Customer's service issue or complaint
- f. Contractor's resolution of service issue or complaint

The system shall be capable of:

- a. Providing real-time access to Customer contact history for the Service Term or any Extended Term of this Agreement;
- b. Documenting non-collection events including problem description and resolution;
- c. Tracking all decline to collect events necessary to fulfill the requirements in Sections 4.3.4, 4.4.4, 4.5.3 and 4.6.4.; and
- d. Fulfilling reporting requirements of Section 11.

10.4 Computer Equipment. Contractor shall have antivirus software on all of its computers and servers that are used to connect to the City for customer service system applications during the Service Term or the Extended Term of this Agreement. Contractor shall periodically update its antivirus definitions. For the purpose of this requirement, Norton Anti Virus or a similar product is required.

10.5 Saturday Service. All collection related problems, including but not limited to complaints, spills, or failure to replace empty containers, reported to Contractor before the close of business on Friday, shall be responded to and resolved by Contractor by 5:00 p.m. on Saturday. All Friday missed collections reported to Contractor by 9:00 a.m. on Saturday shall be picked up, or resolved to the customer's satisfaction by 5:00 p.m. on Saturday. Contractor may resolve all non-collection related calls received after close of business on Friday, and all collection related call received after 9:00 a.m. on Saturday on the next business day.

ARTICLE 11.00 -- REPORTING REQUIREMENTS

Contractor shall maintain in its Oakland office full and complete records and submit reports requested by the City to comply with the reporting requirements of this Agreement. The reports shall be submitted in an electronic format prescribed by the Director, similar to the sample set forth in Attachment H. Contractor shall also provide the City a hard copy of all electronically delivered reports. The Director may revise the formatting of the reports, and the information requested, upon thirty (30) days notice to Contractor.

All data related to the weight of all materials collected through the Program and provided to the City by Contractor per this Article shall be auditable down to the State certified weight document. All weighing instruments, as defined by Business and Professions Code of California, Chapter 5 Section 12500 (a): "Weighing instrument" means any devise, contrivance, apparatus, or instrument used, or designed to be used, for ascertaining weight and includes any tool, appliance, or accessory used or connected therein," used by Contractor associated with the various weighing systems and processes shall comply with the Business and Professional Code of California, Chapter 5, and with the California Code of Regulations Title 4, Division 9. In addition to maintaining State Certification of all devices and associated processes, including but not limited to truck scales, scale heads, computers and software, weight tickets, weigh master certification, and predetermined individual vehicle tare weights, Contractor shall be required to perform or have performed routine scheduled maintenance to truck scales by a State approved service provider to ensure compliance with Title 4 Division 9 between periodic inspections by the regulating agency, and to make documentation of said performance of maintenance services

available to the City upon request. The City shall perform all monitoring and statistical evaluation of the Program with the cooperation of Contractor. The City may, at any time, undertake inspections of Contractor's Oakland facilities.

11.1 Monthly Program Status Report. Contractor shall submit Monthly Program Status Reports for the duration of this Agreement commencing the first month of collection. These reports shall be due on or before the 20th day of each subsequent month. The Monthly Program Status Reports shall include but not be limited to the following:

- a. Detail report of tonnages of all materials collected, except for used motor oil, which shall be measured by volume, for all materials collected through the Program, that shall include the following data fields for each individual load collected:
 1. Date
 2. Time
 3. Facility
 4. Truck number
 5. Route number
 6. Single-family or multi-family
 7. Weight document number (unique, non-repeating number)
 8. Gross weight
 9. Tare weight
 10. Net weight
- b. Summary report of tonnages of all materials shipped for sale, or for disposal, by material, from all suppliers, programs and jurisdictions, from all of Contractor's Oakland facilities. Data will be used by City staff to estimate the portions of total materials shipped that can be attributed to Oakland Program materials collected, by allocation. Report shall include the following data fields:
 1. Commodity name
 2. Total weight in tons, by commodity
- c. Detail report of all loads of Processing Residue shipped from Contractor's Oakland facilities for disposal. Data will be used by the City to report disposal tons to the State of California. The report shall include the following data fields for each load shipped:
 1. Date
 2. Name of disposal facility load was shipped to
 3. Gross weight
 4. Tare weight
 5. Net weight
 6. Jurisdiction of origin reported to disposal facility at time of delivery
- d. Detail report of Multi-Family Dwellings shall include the following data fields:
 1. Address
 2. Name and phone number of contact person
 3. Date of most recent confirmation of name and phone number of contact person

4. Number of units
 5. Service day
 6. Route number
 7. Date of delivery of containers and public education material
 8. Number of containers by type
 9. Container collection location:
 - i. Backyard
 - ii. Curb
 - iii. Key access
 10. Date container collection location most recently established
- e. Summary of Multi-Family Dwellings which were contacted but declined the service, including contact person, telephone number, time and date of call, and reason for declination of service;
- f. Detail report of Small Business accounts that shall include the following data fields:
1. Name of business
 2. Address
 3. Name and phone number of contact person
 4. Account number
 5. Start service date
 6. Route number
 7. Date of most recent payment
- g. Detail report of Small Business accounts that were contacted by Contractor but declined service that shall include the following data fields:
1. Name of business
 2. Address
 3. Name and phone number of contact person
 4. Reason service was declined
- h. Detail report of replacement recycling containers and requests for replacement containers that shall include the following data fields:
1. Addresses of eligible Customers who request replacement container(s)
 2. The date of request for replacement
 3. The date of replacement for each request
 4. Number of business days from request to replacement
 5. The quantity of containers requested
 6. A summary report of 1 through 5
- i. Detail report of missed collection that shall include the following data fields:
1. Addresses of eligible Customers who reported missed collection
 2. Date of report
 3. Date of recovery of missed collection
 4. Number of collection days from date of report to date of recovery
 5. Number of collection days from scheduled service to recovery

6. Route number

- j. Detail report of refused collection that shall include the following data fields:
 - 1. Addresses of eligible Customers whose collection was refused
 - 2. Date of refusal
 - 3. Non-collection notice number (unique, non-repeating number)
 - 4. Reason for collection refusal
- k. Detail report of telephone calls received, and Contractor response made, that shall include the following data fields:
 - 1. Date of call
 - 2. Service address of caller
 - 3. Reason for call:
 - 4. Missed collection
 - 5. Complaints
 - 6. Service calls
 - 7. Recycling container replacement
 - 8. Recycling program information
 - 9. Other
 - 10. Date caller's issue is resolved
- l. Detail of all public awareness campaign activities and related expenditures including copies of all invoices.

11.2 Quarterly Program Status Report. Contractor shall submit Quarterly Program Status Reports (using calendar quarters) due on or before the 20th day of each subsequent quarter. The Quarterly Program Status Reports shall include but not be limited to the following:

- a. Summary of tonnages recovered by route, except for used motor oil, which shall be measured by volume, for both Single Family and Multi-Family Dwellings;
- b. Summary of container replacement information;
- c. Summary of missed or refused collection information;
- d. Discussion of problems encountered and noteworthy experiences in Program operation, including recommendations for Program modification;
- e. Discussion of public awareness campaign efforts and impacts of said efforts and public education budget expenditures including copies of all invoices; and
- f. List of vehicles in service including the following information for each vehicle:
 - 1. Contractor truck number
 - 2. DMV license plate number
 - 3. DMV vehicle registration expiration date
 - 4. Body:

- Vehicle Identification Number
- Make
- Model Year
- 5. Chassis:
 - Vehicle Identification Number
 - Make
 - Model Year
- 6. Predetermined individual vehicle tare weight
- 7. Date of predetermined individual vehicle tare weight

11.3 Annual Program Status Report. Contractor shall submit Annual Program Status Reports due on or before the 20th day of each subsequent calendar year being reported. The Annual Program Status Report shall include but not be limited to the following:

- a. A discussion of public awareness campaign activities and their impact on participation and recovered volumes;
- b. A summary of public education expenditures;
- c. A summary of the quantity of recycling containers delivered and remaining in stock;
- d. Notification of any route changes made during the reporting period;
- e. Dates and locations of all Small Business events attended;
- f. A correction and listing of any errors or omissions in Contractor's monthly and/or quarterly reports; and
- g. Recommendations for modifications and/or improvements to the Program.

11.4 Other Reports or Information. The City may, from time to time, request additional reports or information reasonably related to the Program from Contractor, including but not limited to: route maps; route information; and access to commodity sales revenue information. Such requests shall be subject to the provisions of Article 17.28. Contractor shall comply with requests for information within two weeks of request or at a mutually agreed upon time. Failure to comply with requests shall result in the withholding of all compensation until requests are fulfilled or, at the discretion of the City, the termination of the Agreement pursuant to the provisions of Article 13.00. Access to, and release of information shall be subject to the California Public Records Act and other applicable law governing such access and/or release.

ARTICLE 12.00 -- PAYMENT TO CONTRACTOR

12.1 Monthly Payment to Contractor. Monthly payments by the City to Contractor shall be based on the following:

- a. Contractor's monthly Household Rate times the number of occupied Single Family Dwellings within the Service Area. The City and Contractor agree that the number of occupied Single Family Dwellings at the Effective Date of this Agreement is 39,104 and that this number has been provided by the holder of the City's Solid Waste Franchise Agreement. The number of Single Family Dwellings may be adjusted each month based on evidence acceptable to the City that the dwelling(s) in question is (i) newly constructed, and (ii) occupied. Evidence which is acceptable to the City is (i) a Temporary Certificate of Occupancy or a Certificate of Occupancy as issued by the City's Community and Economic Development Agency or (ii) confirmation of commencement of Single Family Solid Waste collection service by the holder of the City's Solid Waste Franchise Agreement. Compensation shall be prorated for all new Single Family Dwellings receiving service for less than a full month.
- b. Contractor's monthly Household Rate times the number of multi-family units served during the preceding month. The City and Contractor agree that Contractor shall be reimbursed for 27,896 multi-family units commencing with the Effective Date of this Agreement. Contractor shall continue to receive payment for the base number of multi-family units until such time that:
 - 1. Contractor provides documentation satisfactory to the City that more than 27,896 units are being serviced;
 - 2. The City notifies Contractor, pursuant to Section 4.4.8.2, of the removal of Multi-Family Dwellings from the multi-family billing/service list. The City agrees to not invoke this provision until the end of the implementation period of this Agreement, or January 1, 2007, whichever is earlier. Any affected dwellings may be reinstated subject to the provisions and limitations of Section 4.4.8.1.

Compensation shall be prorated for all multi-family units receiving service for less than a full month. Receipt of collection service shall be demonstrated by the placement and service of recycling containers for Targeted Recyclable Materials in designated areas within the proper confines of the Multi-Family building and consistent with the agreement of building ownership or management. Distribution of applicable Program outreach materials must occur prior to or concurrent to the delivery of recycling containers.

- c. The windfall profit sharing payment to be calculated in January and deducted from Contractor's payment in the month following the calculation, or from Contractor's last payment in the final year of this Agreement.
- d. Deductions for the assessment of any liquidated damages.
- e. Small Business rate subsidy, if any, times the number of Small Business customers. The number of Small Business customers shall be prorated to a weekly basis if said service is provided for less than a full month.

- f. The number of oil filters collected times a per-filter rate agreed upon by the City and Contractor.
- g. Premium Backyard Service fee equal to 1/3rd of the amount received by the holder of the City's Solid Waste Franchise Agreement for said service from Customers who do not qualify for special handling service as set forth in Section 4.3.3. As of July 1, 2004 said fee shall be \$4.25 per month and shall be paid to Contractor upon the actual start of backyard recycling cart collection service. Adjustment of this rate shall be made in accordance with Section 12.3.
- h. Deduction of unspent Public Education funds referenced in Section 9.1 at the end of the calendar year. The deduction is to be made from Contractor's January payment or from Contractor's last payment in the final year of this Agreement.
- i. Reimbursement for additional recycling containers required pursuant to Section 4.3.6.

Contractor shall receive payment from the City within thirty (30) calendar days after receipt of the invoice. The City shall contact Contractor within ten (10) business days of invoice receipt if the City disputes any portion of the amounts set forth in Contractor's monthly billing invoice. The City shall pay those amounts not in dispute, while requesting either clarification or back-up information for those amounts in dispute. Once the dispute is resolved, the City shall pay the mutually agreed upon disputed amount within ten (10) business days.

12.2 Monthly Household Rate. Commencing year one of the Agreement, Contractor shall receive \$3.20 each month for each Single Family Dwelling and each unit in a Multi-Family Dwelling as provided by Section 12.1.

12.3 Annual Adjustments to Contractor's Household Rate.. Contractor's monthly Household Rate shall be adjusted upward or downward on January 1 of each year of the Agreement beginning January 1, 2006 as provided in this Section.

- a. The monthly Household Rate shall be annually adjusted by a percentage change determined by the following calculation:
 - Eighty percent (80%) of the percentage change in the Consumer Price Index between the Annual Average (January-December) index in the year immediately preceding the year in which rates are being changed and the Annual Average index twelve (12) months earlier. Any decreases in the index shall be reflected as a negative adjustment.

The annual net CPI percentage change (NetCPI) shall be calculated by the following formula:

$$\text{NetCPI} = (((\text{CPI}_{(i)} - \text{CPI}_{(i-1)}) / \text{CPI}_{(i-1)}) * 80\%)$$

Where

$CPI_{(i)}$ = Index value of the Annual Average (January-December) index immediately preceding the January in which the adjustment occurs; and,

$CPI_{(i-1)}$ = Index value of the Annual Average (January-December) index of the year immediately preceding the year used for $CPI_{(i)}$.

The monthly Household Rate paid to Contractor shall be adjusted by the percentage as calculated above and the new rates paid shall remain in effect until the next annual adjustment.

- c. Adjustments to Contractor's monthly Household Rate will be effective January 1, 2006 through the end of the Service Term or Extended Term.
- d. Adjustment to the payments shall be rounded to the nearest one-tenth of one percent, i.e., 0.001.
- e. The annual increase or decrease to Contractor's per unit rate shall not exceed, in any event, five percent (5%) in any one year. Increases or decreases above five percent (5%) may not be applied to future periods.

12.4 Other Adjustments to Contractor's Payment.

- a. If Contractor's scope of service is modified as a result of changes in Federal and/or State laws and regulations with respect to the termination of used motor oil collection, Contractor's per unit payment will be reduced equal to the amount of the incremental cost of providing said service, adjusted for inflation in accordance with Section 12.3, or at a mutually agreed upon amount.
- b. Should Contractor receive payment from the State of California (pursuant to the Public Resources Code 14549.6 (a) or other incentive payments made through the California Beverage Container Recycling and Litter Reduction Act), said funds shall be provided to the City for public education and Program outreach activities or for other activities mutually agreeable to the City and Contractor.

12.5 Windfall Profit Sharing. Contractor shall share with the City revenues from the sale of scrap paper commodities including but not limited to old news paper (ONP#6 and ONP#8), old corrugated containers (OCC) and mixed paper (MP), when the scrap paper markets meet the windfall profit conditions described in this Article. Windfall profit sharing shall be calculated on an annual basis.

- a. For the purpose of this Article per ton market pricing for scrap paper commodities shall be measured using the weekly publication *Official Board Markets* (OBM) for the San Francisco area using the high OBM price for each commodity, as published in the second weekly edition OBM each month. Contractor's actual sales revenues will not be considered for the purpose of windfall profit sharing.
- b. Annually contractor shall share windfall profits from sales revenues for the designated commodities as follows: When high OBM for a commodity for a minimum of 13 consecutive weeks exceeds 200% of the monthly average of high OBM for the sixty month period immediately preceding the year for which windfall profit sharing is being calculated, then Contractor shall share with the City 50% of the per ton difference between the sixty month average and high OBM for the same period:

A = High OBM

B = Adjusted monthly average of High OBM for the sixty month period immediately preceding the year for which windfall profit sharing is being calculated. If and when high OBM for any of the succeeding twelve (12) months falls below 80% of the prior sixty (60) month average, the price for those months shall be adjusted to 80% of the prior sixty (60) month average.

When $A > (B * 200\%)$ for ≥ 13 -consecutive weeks then Contractor shall pay the City $(A - B) * 50\%$

Example: If the adjusted monthly average of high OMB for ONP#8 in the sixty months (January 2000 – December 2004) preceding the first year of the Agreement (2005) is \$72, and if and when high OBM for ONP#8 sustains equal to or greater than \$144 for a minimum of 13 consecutive weeks in 2005, then Contractor shall pay the City \$0.50 of each \$1.00 above \$144 for the calculated tonnage, per Article 13.4.c, of ONP#8 shipped during the period for which high OBM sustains equal to or greater than \$144.

- c. The method for calculating tonnages subject to windfall profit sharing shall be by allocation. Allocation shall be determined by calculating a percentage of all tons shipped for sale by Contractor as follows: Average monthly total tons of all materials collected through the Program in the period the windfall profit sharing is applied, divided by the average monthly total tons of the designated commodities shipped for sale by Contractor in the same period. Data for these calculations shall be taken from the reports per Articles 11.1.a. and 11.1.b. of this Agreement:

W = Average monthly total tons collected through Program in period

X = Average monthly total tons shipped for sale by Contractor in period

Y = W divided by X

Z = Total tons of a commodity subject to windfall profit sharing shipped for sale by Contractor in period

$Y * Z$ = number of tons of commodity subject to windfall profit sharing

Example: If during a 13 week period in which windfall profit sharing is applied the total tons of materials Contractor collects through the Program equals 3000 (W), and Contractor ships for sale from it's Oakland facilities during the same period a total of 15,000 tons (X), then $(W/X=Y)$ equals 0.2), and if Contractor ships 4,000 tons (Z) of ONP#8 in the same period, then the tons of ONP#8 windfall profit sharing shall be applied to shall be 800 $(Y*Z)$.

- d. Windfall profit sharing payments shall be calculated annually in January for the proceeding calendar year and deducted from Contractor's payment in the month following the calculation, or from Contractor's last payment in the final year of this Agreement. Average high OMB for the prior sixty months will also be determined each January for the current year windfall profit sharing calculation. Example: sixty month average January 2002 – December 2006 will be determined in January 2007 for 2007 windfall profit sharing to be calculated in January 2008.

12.6 City/Contractor Meetings. City and Contractor shall each designate a Contract Manager to meet at least monthly during the first year of this Agreement and at least quarterly thereafter. If necessary for the successful performance of this Agreement, City may request more frequent meetings. The City shall provide Contractor a copy of a draft agenda for such meeting at least four (4) business days before the scheduled date of the meeting. The City's Contract Manager may request the attendance of the Contractor's customer services manager and/or the operations manager at such meeting. If said personnel are unavailable, Contractor shall notify the City and arrange to reschedule the meeting within five business days at which time said employees shall be present. City at its option may opt to meet with Contractor at the time and place of the originally scheduled meeting.

ARTICLE 13.00 -- DEFAULTS AND REMEDIES

13.1 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 the failure or refusal of Contractor to perform as required by this Agreement is not cured within two (2) business days after receiving notice from the City specifying the breach, provided that where Contractor demonstrates to the City's reasonable satisfaction that such breach cannot be cured within such two (2) 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 two (2) 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 13.00 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 17.3.
- i. Contractor fails to comply by the deadline set forth in a notice to abate, or similar type of notification, issued by the City or any other issuing agency for any permit required to be maintained pursuant to Attachment U or for any other notice affecting Contractor's operation of its facilities.

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

13.2 Remedies.

13.2.1 Termination. Upon an event of material breach or Default as defined in Section 13.1, or for the prohibited disposal of Targeted Recyclable Materials as set forth in Section 7.4, 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.

13.2.2 Possession of Property Upon Default. In the event of Contractor's default, the City may rent any and all of Contractor's land, equipment, facilities and other property reasonably necessary for the provision of services hereunder. The City shall have the right to rent 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. Contractor shall be entitled to the reasonable rental value of such property. Contractor agrees that it will fully cooperate with the City to effect said rental 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 reasonably 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 13.2.2. Contractor agrees that the City's exercise of its rights under this section: (i) 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; (ii) does not exempt Contractor from the indemnity provisions of Article 16.00 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 beyond the specified rental period and may at any time at its sole discretion terminate the rental of said equipment and property.

13.2.3 Direct and Consequential Damages. Contractor shall be liable to the City for all direct and consequential damages arising out of Contractor's default.

13.2.4 Liquidated Damages.

13.2.4.1 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 the City contracted 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.

13.2.4.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties further acknowledge that consistent, reliable Residential Recycling Services including collection, Processing and marketing 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 Agreement 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, the City and its Customers will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages that the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 13.00, the parties agree that the liquidated damage amounts set forth in Attachment I 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 sixty (60) days following completion of single stream cart delivery to Single Family Dwellings or August 1, 2005, whichever date is earlier, 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_____

The City may assess Liquidated Damages for a material violation of any contract requirement not specifically cited in Attachment I or elsewhere in this Agreement by the following process:

- a. In the event that a contract violation that has been identified to the company in writing is not timely addressed to the City's satisfaction, the City shall send Contractor, by certified mail, a written Notice to Correct. The Notice shall identify a date after which Liquidated Damages shall apply if the contract violation has not been corrected.
- b. In the event that the contract violation identified in the Notice to Correct has not been corrected by the date specified in the Notice, the City shall assess Liquidated Damages of not less than \$50 per business day, per occurrence.

The Director will not capriciously impose additional financial penalties and will not impose penalties for any given month exceeding ten (10) percent of Contractor's monthly compensation for the month in which the penalties were assessed. Any penalties and fines imposed pursuant to this Section shall be in addition to any other remedies available to the City.

13.2.5 Deduction from Payments because of Contractor's Failure to Make Collections. In addition to the penalties and fines, in the event Contractor, for any reason, fails to perform the collections called for in the Agreement for any period, with the result that any portion of the scheduled collection is not completed by 6 p.m. on Saturday (or Sunday when Friday collection delayed due to a non-collection holiday), Contractor shall not be paid for the work not performed. Whenever such failure occurs, the Director shall deduct, for such non-performance, a reasonable amount from Contractor's next monthly payment(s), which amount shall be based on, among other factors, the number of residences from which collections have not been made, the duration of such failure of collection, the additive and deductive adjustments that would have been applied to such prices had the collections been made, and special costs including administrative expenses incurred by the City as a consequence of such failure. Contractor may provide mitigating information for the City to consider in determining the reasonableness of any deduction from Contractor's monthly payment for failure to make collections.

13.2.5.1 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. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incidents(s)/non-performance. The Director 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 shall be final unless appealed in writing to the City Administrator 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. Failure to pay liquidated damages shall entitle the City to withhold or deduct payments under the Agreement, as provided by Section 12.1.d.

13.2.5.2 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.

13.2.6 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, if the remedy of damages for a breach hereof by Contractor is inadequate, the City shall be entitled to injunctive relief compelling the specific performance of Contractor's obligation hereunder.

13.2.7 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.

13.2.8 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.

13.3 Excuse from Performance.

13.3.1 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.

13.3.2 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.

13.3.3 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.

13.3.4 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 13.2.2 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 13.2.2.

13.3.5 Contractor Request for Excuse from Performance. In the event Contractor is the target of labor unrest not conducted by its employees, and beyond the reasonable control of Contractor, Contractor may request the City to excuse Contractor from performance. Contractor shall immediately notify the City of such labor unrest, and within two (2) working days of the start of such labor unrest, Contractor shall commence appropriate legal action to end same. The decision to approve Contractor's request for excuse from performance shall be at the sole discretion of the City.

13.4 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 the City's duties to provide for the services set forth in this Agreement, 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.

13.5 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 the Household Rate due to 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 Household Rate pursuant to Article 12.00 of this Agreement.

13.5.1 Meet and Confer. In the event of disputes described in Section 13.5, the parties agree that they promptly will meet and confer to attempt to resolve the matter between themselves.

13.5.2 Mediation. In the event that a dispute specified in Section 13.5 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 14.00 -- PERFORMANCE BOND

14.1 Performance Bond or Alternative Security. By December 16, 2004, Contractor shall provide the City with a fully prepaid Performance Bond payable to the City substantially in the form of Attachment C, in the amount of \$500,000 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 Contractor's cost to provide services for three (3) months as of the Effective Date of this Agreement. 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 fifteen (15) calendar days prior to the expiration of the preceding Performance Bond or Alternative Security. 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. Failure to maintain a Performance Bond or Alternative Security at all times shall subject Contractor to liquidated damages as set forth in Section 13.2.4.

14.2 City's Right to Draw Against Performance Bond. The City shall have the right to draw against the Performance Bond for an event of default as set forth in Article 13.00 if Contractor has not cured the event of default after expiration of any applicable cure period.

14.2.1 Contractor's Obligation to Replenish Performance Bond. Contractor covenants that it shall not dispute with its bonding company the City's right to draw upon the Performance Bond if Contractor has not cured an event of default set forth in Section 13.1 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.

14.3 Termination of Performance Bond. Under no circumstances shall Contractor change, or allow the expiration of, the Performance Bond 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. Contractor's obligation to maintain the Performance Bond shall terminate and be canceled upon the completion of all of Contractor's obligations under this Agreement with the exception of Contractor's obligation to maintain records pursuant to Section 17.33. In the event of Contractor's default, the Performance Bond shall remain in effect until the City or its designated agent has completed all of Contractor's obligations under this Agreement. The 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. Absent such certificates or documents executed by the City, the Performance Bond shall not be terminated or canceled.

ARTICLE 15.00 -- INSURANCE

15.1 Contractor's Agreement to Provide Insurance. On or before the Effective Date, Contractor shall procure and keep in force for the Service Term or any Extended Term, or as otherwise specified below, the insurance coverage set forth below, with insurers with at least a Best rating of AA, or better, and at least class eight (8) or larger, or their equivalent thereof, 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. The certificate holder is to be the Director and certificates shall be sent to the address shown in Section 17.15. Failure to maintain the insurance coverage specified in Article 15.00 at all times shall subject Contractor to liquidated damages as set forth in Section 13.2.4. If Contractor is able to provide proof of continuing coverage within fifteen (15) calendar days of the expiration, cancellation, termination or material reduction of insurance coverage required in Article 15.00, said liquidated damages shall not be enforced by the City.

15.2 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, Bodily Injury, Broad Form Property Damage, Contractual Liability and Products and Completed Operations Coverage. The policy shall contain a

severability of interest clause or cross liability clause or the equivalent thereof. The policy shall be endorsed to include the following:

- a. All coverage 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:
\$1,000,000 each occurrence, annual aggregate and
\$2,000,000 annual aggregate for products-completed operations.
- c. Contractor shall immediately notify the City when asserted Claims are greater than \$500,000. If requested by the City, Contractor shall immediately purchase additional umbrella coverage to restore coverage limits specified above.

15.3 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 One Million Dollars (\$1,000,000) 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.

15.4 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 One Million Dollars (\$1,000,000) 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 and thereafter as required by that code. The City will accept the State Compensation Insurance Fund as an acceptable insurer for the purposes of Workers' Compensation coverage.

15.5 Environmental Impairment Liability Insurance. Contractor, at its own expense, shall carry and maintain environmental impairment liability insurance for the Service Term or any Extended Term, including any extensions thereto, in the amount of One Million Dollars (\$1,000,000) 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.

15.6 Additional Insureds. The City, its officers, directors, 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 Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; and vehicles and equipment owned, occupied, leased, hired or borrowed by 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. If Contractor submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 11 85 form (or more recent) and/or CA 20 48, or equivalent, subject to the City's approval.

15.7 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.

15.8 City's Right to Cure. If Contractor fails to procure and maintain any insurance required by this Agreement, the 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.

15.9 Annual Aggregate Limit. Should any of the required insurance to be provided according to Sections 15.2 through 15.5 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.

15.10 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 coverage shall be maintained during the Service Term or any Extended Term.

15.11 Interpretation. All endorsements, certificates, forms, coverage 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.

15.12 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 16.00 – INDEMNITY

16.1 Contractor's Duty to Indemnify City. Contractor shall defend with counsel approved by the City, which consent shall not be unreasonably withheld, indemnify and hold

harmless the City and the City's officers, agents, employees, council members, 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 Contractor, subcontractor, agents, employees, or their proximity to the property of the City, or any other property upon which Contractor, its subcontractors, agents, employees are performing any work called for in connection with this Agreement. Contractor's duty to defend, indemnify and hold harmless the Indemnitees arising during the Service 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 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 awarded Contractor an Agreement which allegedly violates state or federal law under then current judicial precedent; and any Claim arising from the City's performance under this Agreement.

16.2 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, which consent shall not be unreasonably withheld, and Contractor shall have authority to settle any Claim provided such settlement fully releases and extinguishes Indemnitees' alleged liability under the Claim and such settlement is approved by the City. Where a conflict of interest exists between the Indemnitees and Contractor with respect to a Claim that is covered by Section 16.1, Contractor shall provide the Indemnitees with independent legal counsel of the Indemnitees' choice, at Contractor's expense.

16.3 Hazardous Waste Indemnification. Contractor shall indemnify, defend with Counsel approved by the City, which consent shall not be unreasonably withheld, 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 Waste at any place where Contractor stores or disposes materials pursuant to this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, (CERCLA), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify Indemnitees from liability. 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 marketing of Targeted Recyclable Material 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 non-Recyclable waste which Contractor may have collected, that the City has not, and, by this Agreement does not, instruct Contractor on its collection methods, nor supervise the collection and disposal of such 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.

16.4 AB 939 Indemnification. If Contractor fails or refuses to provide information specified in Attachment H and prevents the City from submitting reports required by AB 939 in a timely manner, Contractor agrees to defend, with Counsel approved by the City, which consent shall not be unreasonably withheld, indemnify and hold harmless the Indemnitees against all fines and/or penalties imposed by the California Integrated Waste Management Board.

ARTICLE 17.00 -- GENERAL PROVISIONS

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. The 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 4.3 through 4.6 and Article 7.00 of this Agreement. The 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 Coordination with Other City Services. The City will assist Contractor in coordinating routing and scheduling matters with other City services, such as Solid Waste and yard waste collection and street sweeping. Contractor is responsible for all costs associated with implementing and maintaining day-of-service route changes should the Solid Waste collection routes be changed by the holder of the City’s Solid Waste Franchise Agreement. The City shall

request the holder of the City's Solid Waste Franchise Agreement to provide Contractor with five months prior notification of any Solid Waste and yard waste collection route changes contemplated during the implementation period of this Agreement.

17.3 Nondiscrimination.

17.3.1 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 age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. 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 age, marital status, religion, gender, sexual preference, race, creed, color, national origin, AIDS, ARC, or disability. Such action shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. 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 Contractor, state that all qualified applicants shall receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- 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.
- d. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Attachment J ("Declaration of Compliance with the Americans with Disabilities Act") attached hereto and incorporated herein.

17.3.2 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.

17.4 Compliance with the City's LBE and SLBE Programs. Contractors utilizing subcontractors shall comply with the Local and Small Local Business Enterprise Program (LBE/SLBE) goals attached and incorporated herein as Attachment K. Additionally, opportunities for training and employment shall be given to residents of Oakland.

17.4.1 Ownership and Workforce Composition. Contractor shall submit information concerning the ownership and workforce composition of Contractor's firm as well as its subcontractors and suppliers, by completing Attachment L ("Professional Services Questionnaire"), Attachment M ("Project Consultant Team"), and Attachment N ("Employment Questionnaire"), attached and incorporated herein and made a part of this Agreement.

17.4.2 Affirmative Action Efforts. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.

17.4.3 Recruitment of Subcontractors. In the recruitment of subcontractors, the City requires all Contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. In the use of such recruitment, hiring and retention of employees or subcontractors, the City requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

17.4.4 Sale of Recyclables for LBE/SLBE Credit. For the purposes of determining LBE and SLBE participation, the City will calculate participation based on a "value added" approach for the sale of Recyclables. Specifically, if Contractor desires to receive credit for the sale of Recyclables to a LBE and/or SLBE processor, Contractor will be credited 20% of the sale amount of Targeted Recyclable Materials, as follows: The dollar amount of credit toward LBE and/or SLBE participation will be calculated as $(0.20) \times (\$S)$, where $\$S$ is the sell price that Contractor receives for selling Targeted Recyclable Materials to a LBE and/or SLBE processor.

17.5 Local Employment Program. Attachment O is not used.

17.6 Contractor An Independent Contractor. It is expressly agreed that in the performance of the services under this Agreement, 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. Contractor shall determine the method, details and means of performing the services described in this Agreement unless such determination is specifically assigned to the City or other party. Contractor has completed the Independent Contractor Questionnaire attached as Attachment P.

17.6.1 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.

17.6.2 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 that accrue to any City employees, and Contractor expressly waives any claim it may have or acquire to such benefits.

17.6.3 Non-Exclusive Relationship. Contractor may perform services for, and contract with, as many additional clients, persons or companies as Contractor, in his or her sole discretion, sees fit.

17.7 Wages.

17.7.1 Living Wage Requirements. This Agreement is subject to the Living Wage Ordinance of Chapter 2.28 of the Oakland Municipal Code and its implementing regulations. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein as Attachment Q and made part of this Agreement, and unless specific exemptions apply or a waiver is granted, that Contractor provide the following to its employees who perform services under or related to this Agreement. All of the provisions of Section 17.7.1, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

17.7.1.1 Minimum Compensation. Said employees shall be paid an initial hourly wage rate of \$9.66 with health benefits or \$11.11 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31

over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.

17.7.1.2 Health Benefits. Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.25 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.

17.7.1.3 Compensated Days Off. Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

17.7.1.4 Federal Earned Income Credit (EIC). Contractor shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.

17.7.1.5 Notice to Employees. Contractor shall provide to all employees and to the City's Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.

17.7.1.6 Reporting. Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Upon request, Contractor shall provide a copy of said list to the City's Public Works Agency, on a quarterly basis (using calendar quarters), due on or before the 20th day of each subsequent quarter for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

17.7.1.7 Subcontractor Obligations. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the City's Office of Contract Compliance.

17.7.2 Payment of Income Taxes. Contractor is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by the City to Contractor for services under this Agreement. On request, Contractor shall provide the City with proof of timely payment. Contractor agrees to indemnify the City for any claims, costs, losses, fees, penalties, interest or damages suffered by the City resulting from Contractor's failure to comply with this provision.

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/Campaign Contributions. 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. This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations. The Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations. Contractor must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as Attachment R.

17.10 Business Tax Certificate. Contractor shall obtain and provide proof of a valid City business tax certificate. Said business tax certificate must remain valid during the duration of this Agreement.

17.11 Equal Benefits Ordinance. This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the City; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the City or (2) of real property owned by others for the City's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of Contractor's operations that occur (1) within the City; (2) on real property outside Oakland if the property is owned by the City or if

the City has a right to occupy the property, and if Contractor's presence at that location is connected to a contract with the City; and (3) elsewhere in the United States where work related to a City contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor. The equal Benefits Ordinance requires among other things, submission of Attachment S, the Equal Benefits-Declaration of Nondiscrimination, incorporated herein.

17.12 Nuclear Free Zone Disclosure. Contractor represents, pursuant to Attachment T ("Nuclear Free Zone Disclosure Form"), that Contractor is in compliance with the City's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Contractor shall complete Attachment T, attached hereto.

17.13 Conflict of Interest/Agents/Brokers. 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, in his/her official capacity, 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 warrants and represents, to the best of its knowledge, that no public official or employee of the City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.
- e. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matter already made by Contractor to the City, that (1) no public official of the City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a

direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$1,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$1,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$250 the previous year. Contractor agrees to promptly disclose to the City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

- f. Contractor warrants that it has not violated any of the conflict of interest provisions under Government Code Section 1090, et seq., in the employment or retention of any subcontractor, agent, company, consultant, or person other than bona fide part-time or full-time consultants or full-time employees of Contractor working solely for Contractor, to solicit or secure this Agreement. Contractor further warrants that it has not paid or agreed to pay any subcontractor, agent, company, consultant or persons other than bona fide part-time or full-time consultants or employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.
- g. 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.
- h. Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation.
- i. In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Contractor understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement.

17.14 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.

17.15 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 Director, Public Works Agency with courtesy copies to the City Administrator and City Attorney.

Director
Public Works Agency
City of Oakland
250 Frank H. Ogawa Plaza, 4th Floor
Oakland, California 94612
Telephone: (510) 238-3961
Facsimile: (510) 238-2233

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

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

If to Contractor, address to:
California Waste Solutions
1820 10th Street
Oakland, California 94607
Telephone: (510) 832-8111
Facsimile: (510) 832-8206

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 the 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; or with written notice via mail, fax, electronic mail, or other means.

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

17.17 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.

17.17.1 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.

17.17.2 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 Residential Recycling Services operations in a safe, effective and responsible fashion, at all times in keeping with applicable environmental laws, regulations and best 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.

17.17.3 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. If requested, Contractor shall furnish the City with audited or reviewed financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years; and

c. If requested by the City, Contractor shall furnish information about any or all of the following items: (i) proof that the proposed assignee has at least three (3) years of residential recycling collection, Processing, and marketing management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under the Agreement; (ii) proof 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 recycling or other 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) proof that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) proof that the proposed assignee conducts its recycling operations in accordance with sound management practices in full compliance with all federal, state and local laws regulating such operations including the handling and disposal of Hazardous Wastes which may be collected; and (v) proof 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.

17.17.4 Worker Retention. In the event of an assignment as set forth in Section 17.16.1 Contractor acknowledges that workers who perform services under this Agreement may be displaced from their employment. Contractor shall require the proposed assignee to offer employment to all qualified non-management or non-supervisory displaced workers who have been employed by Contractor for at least one hundred twenty (120) calendar days prior to Contractor's request to assign this Agreement. The City and Contractor agree that this provision shall apply to no less than 12 collection route drivers, 1 mechanic and 13 sorters as of the Effective Date of this Agreement. Such non-management or non-supervisory workers shall be considered qualified displaced workers subject to these worker retention requirements. The

proposed assignee shall not discharge qualified workers for at least ninety (90) calendar days after the date of assignment, except for cause. Thereafter, the continued employment of qualified displaced workers shall be under the terms and conditions established for all of the proposed assignee's workers in the particular classification. The proposed assignee shall not be required (i) to displace any of its current employees, (ii) to modify its current job performance requirements or employee selection standards, (iii) to alter its current wage and employment conditions, or (iv) to offer employment to more of the displaced workers than are needed to perform the services assigned. Nothing in this section shall be construed to require Contractor to ensure the employment of the above number of personnel during the Service Term or Extended Term of this Agreement prior to the event of an assignment.

17.18 Defense of Agreement 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 the 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 17.18. The City will reasonably cooperate with Contractor in prosecuting and defending its 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 Agreement 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.

17.19 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.

17.20 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.

17.21 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 that succeed to or assume the functions they are currently performing.

17.22 Governing Law. This Agreement shall be governed by the laws of the State of California.

17.23 Validity of Contracts. The Oakland City Council must approve all agreements greater than \$15,000. This Agreement shall not be binding or of any force or effect until signed by the City Administrator or his or her designee and approved as to form and legality by the City Attorney or his or her designee.

17.24 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.

17.25 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.

17.26 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 3.5.

17.27 Cooperation with Subsequent Providers. At the expiration of the Agreement Term provided for hereunder, or in the event of termination under Article 13.00 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.

17.28 Access to and Disclosure of Records.

17.28.1 Access to Records. Contractor shall permit access to its records and its records of employment, employment advertisements, application forms, and other pertinent data or records relating to Contractor's obligation under Sections 17.3, 17.4, 17.5, 17.7 and 17.8 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 17.3, 17.4, 17.5, 17.7 and 17.8 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.

17.28.2 Confidential Information. Contractor maintains that certain information provided is confidential and proprietary information ("Confidential Information"), including but not limited to reported commodities sales prices, personnel employment information, and trade secrets. 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.

17.28.3 Permitted Release of Information. Confidential or proprietary 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 non-confidential 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.

17.28.4 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 or proprietary 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 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 information which such counsel advises is legally required to be disclosed, and exercise its best efforts to preserve the confidentiality of the 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 information so furnished.

17.29 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.

17.30 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.

17.31 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 7.1, 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.

17.32 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 material recovery facility or Processing facilities (collectively "Facilities") throughout the Service Term or any Extended Term to adequately process all Targeted Recyclable Material 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 Service Term or any Extended 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 that 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. 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 Attachment U and incorporated by reference herein.

17.33 Audit. Contractor shall maintain in its office full and complete accounting records, prepared in accordance with generally accepted accounting principles, reflecting Contractor's work on the Program. The City may at any time require an audit of Contractor's books and records or an audit of operations/management at any reasonable time. The cost of all required audits shall be the responsibility of the City. The City or any of its duly authorized representatives shall have access, on reasonable notice, to such books, records, documents, and other evidence related to the Program for the purpose of inspection, audit and copying. Information obtained by the City shall be subject to the provisions of Article 17.28. Contractor shall provide proper facilities for such inspection, audit, and copying.

These records shall be kept, at a minimum, for four years after the end or termination of the Agreement. In addition, those records which relate to any "dispute" appeal, or litigation, or the settlement of claims, or where an audit exception has been taken, shall be maintained and made available until four years after the resolution of such appeal, litigation, claims or exception. Such audit shall be conducted by City personnel or by an independent firm with experience in auditing public service companies. Audit information shall be kept confidential, except as may be required by public disclosure laws.

Contractor shall furnish the City with a copy of its annual financial statement that fairly reflects the results of all operations and Contractor's financial condition within one hundred twenty (120) calendar days after the close of Contractor's fiscal year. Contractor shall provide a separate schedule that fairly reflects the results of operations pursuant to this Agreement. The financial statement shall be prepared in accordance with Generally Accepted Accounting Principles by a Certified Public Accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy.

17.34 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.

17.35 Entire Agreement; Attachments Included. This Agreement is executed in four (4) originals, each of which is deemed to be an original. This Agreement consists of 72 pages and Attachments A through W (attached hereto) and constitutes the entire understanding and agreement between the City and Contractor with respect to the services to be provided under this Agreement. This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by Contractor for the City and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

17.36 Inconsistency. If there is any inconsistency between the main Agreement and the attachments, the text of the main Agreement shall prevail.

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the first date indicated above.

City of Oakland,
a municipal corporation

Contractor

(City Administrator's Office) (Date)

(Signature) (Date)

Public Works Agency (Date)

Business Tax Certificate No.

Approved as to form and legality:

Resolution Number

(City Attorney's Office) (Date)

Accounting Number

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17.36 Inconsistency. If there is any inconsistency between the main Agreement and the attachments, the text of the main Agreement shall prevail.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the first date indicated above.

City of Oakland,
a municipal corporation

Ann A. Egan
(City Administrator's Office) (Date)

R. C. Martinez 1.12.2005
Public Works Agency (Date)

Approved as to form and legality:

Roxie V. Gierro 1/11/05
(City Attorney's Office) (Date)

DAVID DUONG, President
Contractor

[Signature] 12/29/04
(Signature) (Date)

11046737
Business Tax Certificate No.

78560
Resolution Number

67897
Accounting Number

Attachment A
List of City Facilities

Department	Facility	Address
	Veterans Memorial Building	200 Grand Ave.
Head Start	Franklin	1010 E. 15th St.
Head Start	Frank G. Mar	274 12th St.
Head Start	Maritime	2550 W. 10th St.
Head Start	Willow	1682 7th St.
Head Start	Fannie Wall	647 55th St.
Library	Asian Community	388 9th St.
Library	Dimond/Rohan	3565 Fruitvale Ave.
Library	Lakeview	550 El Embarcadero
Library	Rockridge	5366 College Ave.
Library	Temescal	5205 Telegraph Ave.
Library	West Oakland	1801 Adeline St.
Library	Golden Gate	5606 San Pablo Ave.
Library	Montclair	1687 Mountain Blvd.
Library	Piedmont	160 41st St.
Fire	Administration Building	250 Fallon St.
Fire	Firehouse #1	1605 MLK Jr Way
Fire	Firehouse #10	172 Santa Clara Ave.
Fire	Firehouse #12	822 Alice St.
Fire	Firehouse #15	455 27th St.
Fire	Firehouse #19	5776 Miles Ave.
Fire	Firehouse #3	1445 14th St.
Fire	Firehouse #5	934 34th St.
Fire	Firehouse #6	7080 Colton Blvd.
Fire	Firehouse #8	463 51st St.
Park/Rec	Lakeside Park Sailboat House	Bellevue Ave.
Park/Rec	Dimond Recreation Center	3860 Hanly Road.
Park/Rec	Davie Memorial Stadium	198 Oak Rd., Piedmont
Park/Rec	Lions Swimming Pool	1860 Hanly Rd.
Park/Rec	Francis Marion Smith Recreation Center	1969 Park Blvd.
Park/Rec	Lakeside Park Garden Center	666 Bellevue Ave.
Park/Rec	Rotary Nature Center	Bellevue Ave
Park/Rec	North Oakland Recreation Center	365 45th St.
Park/Rec	HJK Convention Center	10 10th St.
Park/Rec	Montclair Recreation Center	6300 Moraga Ave.

Department	Facility	Address
Park/Rec	Mosswood Recreation Center	3612 Webster St.
Park/Rec	Temescal Swimming Pool	371 45th St.
Park/Rec	Poplar Recreation Center	3130 Peralta St.
Park/Rec	DeFremery Rec. Ctr/Swimming Pool	1651 Adeline St.
Park/Rec	Bushrod Recreation Center	560 59th St.
Park/Rec	Lincoln Recreation Center	250 10th St.

Attachment B
Non-Targeted Recyclable Materials

1. Molded Plastics
2. Ferrous and non-ferrous scrap metal other than Targeted Recyclable Materials, including, but not limited to: compressed gas containers and tanks (e.g., propane, helium)
3. automobile batteries
4. vehicle tires
5. CRTs, including computer monitors

City and Contractor may mutually agree to include additional materials or remove materials from this list of Non-targeted Recyclable Materials.

Contractor represents that Contractor can and does recover the Non-Targeted Recyclable Materials listed above through processing and returns these Non-Targeted Recyclable Materials to the economic mainstream. In the event Contractor fails to ensure that the maximum amount of a specific Non-Targeted Recyclable Material collected is returned to the economic mainstream in the form of commodities, City may request that this specific Non-Targeted Recyclable Material be removed from the above list. Contractor shall not unreasonably deny City's request.

Attachment C
Performance Bond

Attachment D Implementation Plan

Implementation Plan elements:

- I. Service Provider Implementation Plan Profile
- II. Implementation Supplement
- III. Task & Timeline: Salient Implementation Tasks for Single Stream Residential Recycling
- IV. Cart Delivery Schedule

I. Service Provider Implementation Plan Profile

Service Provider: California Waste Solutions (CWS)

Service Provider Implementation Manager: Ken Etherington

Service Provider Review Contact for City Public Education Materials: Ken Etherington

Single Stream Cart Manufacturer: Otto

Cart/Food Pail/Pub Ed Materials Delivery Service Provider: Environmental Delivery Services

Location(s) of Cart/Food Pail/Pub Ed Materials Staging Area: 1819 10th St. (Clar Building)

Start Date for Cart/Food Pail/Pub Ed Materials Delivery to Single Family Customers: 1-31-05

Completion Date for Cart/Food Pail/Pub Ed Mater. Delivery to Single Family Customers: 4-30-05

Start Date for Multi Family Implementation: 1-31-05

Multi Family Implementation Activities: Deliver gray single stream carts + public education materials to customers currently receiving collection service with blue & yellow 18-gallon tubs. Re-sticker existing containers. Other activities TBD.

Completion Date for Multi Family Implementation: 4-30-05

Start Date for City Facilities Implementation: 1-31-05

City Facilities Implementation Activities: TBD

Completion Date for City Facilities Implementation: 4-30-05

Start Date for Small Business Implementation: 1-31-05

Small Business Activities: TBD

Completion Date for Small Business Implementation: 4-30-05

II. Implementation Supplement

Cart Delivery – Single Family Dwellings

- Delivery will include: gray 64-gallon cart, kitchen food pail, and public education materials.
- Carts will be delivered on the same day as the customer's regularly scheduled collection service.
- Public education materials shall be:
 - Produced by the City, delivered to the Cart/Food Pail/Pub Ed Materials Staging Area
 - Placed inside kitchen food pail for delivery to residents
- Food pail(s) will be fastened (zip-tied) to the gray cart's handle. For 2, 3, & 4-plex's, all food pails will be fastened to the handle of the cart(s).
- Delivery will be to discrete addresses, per the Waste Management of Alameda County (WMAC) garbage customer database provided by the City to CWS on 10-8-04.
- The number of carts delivered to each discrete address shall be documented in writing at the time of delivery by the entity performing cart delivery, and this documentation shall be provided to the City.
- Initial cart delivery quantity to 2, 3, & 4-plex's shall be one cart, unless other arrangements are made in advance of cart delivery. The City shall ensure that WMAC forwards to CWS a list of 2, 3, & 4-plex's that have (in response to a letter from WMAC dated 12-16-04) requested more than one cart, by January 15, 2005. This list shall include address and total number of carts requested. Upon request, CWS shall provide initial cart delivery (i.e., not counted as a replacement) additional carts, up to a total of one cart per unit.
- Initial cart delivery to backyard service customers shall be at the curb.
 - If the cart is still at the curb on the next regularly scheduled service day following cart delivery, CWS shall deliver the cart to the customer's on-premises service location – conducting the necessary communication with the customer to ensure satisfactory weekly collection service going forward.
 - If the cart is neither at the curb nor at the customer's on-premises service location on the next regularly scheduled service day following cart delivery, CWS shall conduct the necessary communication with the customer to ensure satisfactory initiation of weekly collection service going forward.

Initiating Service to Single Family Dwellings

- Customers shall receive cart collection service on their next regularly scheduled service day following cart delivery

Cart Delivery – Multi Family Dwellings Currently Receiving Blue/Yellow 18-gal Tub Service

- Delivery will include: gray 64-gallon cart, and public education materials.
- Carts will be delivered on the same day as the customer's regularly scheduled collection service.
- Public education materials shall be:
 - Produced by the City, delivered to the Cart/Food Pail/Pub Ed Materials Staging Area
 - Delivered with the carts, as instructed by the City
- Delivery will be to discrete addresses, per the Waste Management of Alameda County (WMAC) garbage customer database provided by the City to CWS on 10-8-04.
- The number of carts delivered to each discrete address shall be documented in writing at the time of delivery by the entity performing cart delivery, and this documentation shall be provided to the City.
- Initial cart delivery quantity shall be at minimum one cart, and more than one if requested in advance by the customer. Prior to cart delivery CWS will notify each customer in writing that they may: (1) request more than one cart; and (2) specify an on-premises collection location that CWS will service weekly for no additional charge.

Initiating Service to Multi Family Dwellings Currently Receiving Blue/Yellow 18-gal Tub Service

- Customers shall receive cart collection service on their next regularly scheduled service day following cart delivery

III. Task & Timeline

Attached

IV. Cart Delivery Schedule

Contractor shall deliver carts and pails to single-family residences, and to multi-family residences currently using 18-gallon bins, during two periods.

Contractor will deliver carts and pails (approximately 6,000 each) to the aforementioned residences on Routes 1 and 2, beginning January 31, 2005 and ending February 6, 2004. Maps for Routes 1 and 2 are attached, and represent the delivery schedule for these areas during this one-week period.

Contractor will deliver carts and pails (approximately 32,000 each) to the aforementioned residences on all remaining routes beginning March 21, 2005 and ending April 30, 2005.

Attachment E
Service Area Map

Attachment F
Small Business Subscription Rates

The following rates shall be the maximum rates that Contractor may charge Small Business Customers upon the Effective Date of this Agreement. These rates may be adjusted annually in the manner described in Section 12.3. The City may, at its option, subsidize the Small Business rates.

<u>Service Type</u>	<u>Subscription Rate</u>
40-gallon bag	\$5.00 per bag
18-gallon bin	\$8.00 per month
64-gallon cart	\$7.50 per month
96-gallon cart	\$10.00 per month

Contractor may charge a \$30.00 reinstatement of service fee to Small Business cart customers if service has been discontinued for failure to pay the subscription rate and Contractor has to redeliver a cart(s).

City agrees to subsidize Contractor for the cost of providing Small Business Recycling service pursuant to the following:

- A. \$1.50 per month per Small Business Customer using cart service when the number of monthly Small Business cart Customers exceeds 300 but is less than 500.
- B. If the number of Small Business Customers using cart service exceeds 500, the City and Contractor will meet and mutually agree upon a revised subsidy.

Attachment G
Processing Facility's Relationship to Neighborhood

To address concerns expressed by neighbors of Contractor's facility located at 1820 10th Street, Oakland, and used by Contractor to process recyclable materials, Contractor has agreed to take the following actions in addition to those required by its Conditional Use Permit CM92-222 (approved by Oakland City Council Resolution No. 69579 C.M.S.) and in addition to any and all other permits and/or licenses required for the operation of the facility.

1. Prior to January 1, 2005 Contractor shall hire a pest control management firm to evaluate the facility and implement a vector control management program. Such program shall commence by January 1, 2005 and shall be followed by Contractor during the Service Term and any Extended Term of this Agreement. Contractor shall provide the City with a copy of the pest control report and the recommended pest control management plan.
2. All collection vehicles and long haul transport vehicles owned, leased, rented or used by Contractor shall travel on designated truck routes when coming to or leaving the facility. The only exception shall be for a collection vehicle(s) servicing residential or commercial business accounts in the area adjacent to the facility. Contractor shall notify all companies transporting recyclable materials to and from its facility of the requirement to use a designated truck route.
3. Contractor shall maintain at its facility a copy of Contractor's Hazardous Materials Business Plan. Contractor shall also maintain a copy of its Storm Water Pollution Prevention Plan. Contractor shall provide the City a copy of said plans and any/all updates if so requested. Contractor's employees shall be trained in the best management practices of said plans. Contractor shall comply with all plan requirements and best management practices.
4. Contractor shall hire a professional engineer experienced in the assessment and installation of dust and odor suppression systems to inspect the facility and to make recommendations for improvements to minimize these two problems. Contractor shall provide the City with a copy of the site assessment and recommended improvements. Contractor shall expend up to \$25,000 for site improvements to control dust and odors, in addition to any fees paid to its consultant(s). Contractor and the City shall prioritize the work if the cost of the improvements exceeds \$25,000. Said assessment shall commence upon execution of the Agreement and the recommended improvements shall be installed by May 31, 2005.
5. Contractor and the City shall equally share the cost of constructing a twelve-inch (12") reinforced concrete pad at the 11th Street entrance to Contractor's facility and the overlay of a portion of 11th Street with two-inch (2") asphalt concrete. The City shall prepare all necessary plans and specifications for the work. The preliminary estimate for the cost of this work is \$35,000.
6. Contractor shall spend up to \$5,000 to install street trees on Pine Street between 10th Street and 11th Street by June 30, 2005, in locations determined by the Director, if the sidewalk is of sufficient width to accommodate a tree and to maintain the minimum right-of-way for

pedestrians. Contractor shall be responsible for watering trees during the Service Term of this Agreement to ensure the proper growth of the trees.

7. Contractor shall hire a consultant to advise on reconfiguring the plant such that the Pine Street roll-up door will be closed except for extreme emergencies. Contractor agrees to expend up to \$20,000 in reconfiguring the plant to avoid using the Pine Street roll-up door. If the cost to reconfigure the plant exceeds \$20,000 Contractor will meet with the City to explore alternative ways to accomplish the intent of this provision. Loading and unloading of trucks will take place within the building. In concert with this commitment, the community supports moving the K-rail on 10th Street and Frontage Road, back to mid-block between Frontage Road and Pine Street to facilitate access to the facility from Frontage Road rather than through the neighborhood.

Attachment H
Report Formats

To be attached by March 31, 2005

Attachment I
Liquidated Damages

<i>Incident</i>	<i>Liquidated Damage</i>
1. Commencement of residential collection prior to 6:00 a.m. (without authorization by Director)	\$25.00 per incident
2. Failure to collect missed Recyclables within twenty four (24) hours, or by 6 p.m. on next business day (including Saturday), after a missed pick-up order is given to Contractor	\$25.00 per incident
3. Two (2) consecutive failures to collect Recyclables at a dwelling with qualifying special handling services per Section 4.3.3	\$100.00 per incident
4. Collection from Single Family Dwellings on any day other than the previously specified collection day (Except for missed pick-up collections and/or except when authorized by Director)	\$10.00 each dwelling.
5. Failure to correct performance deficiency, after being notified by City, of factors such as non-replacement of recycling containers to designated locations, spilling, not closing gates, crossing or damaging planted areas, or similar violations. The quality of performance standard required to be met by Contractor will be delineated by City upon providing notice of said service deficiency.	\$25.00 per incident
6. Failure to keep collection vehicles clean	\$25.00 per incident
7. Driver or driver's helper not in uniform	\$25.00 per incident
8. Failure to provide by 5:00 p.m. on due date required reports. Any report shall be considered late until such time as the complete report is received by City.	\$25.00 per report per business day.
9. Disposing of Recyclable Material without authorization from the Director	\$1,000.00 per incident.
10. Failure to return Customer phone calls within twenty four (24) hours, or next business day, after a Customer leaves a message or City leaves a message (including via fax; computerized work order system)	\$25.00 per incident

11.	Failure to deliver recycling container within ten (10) business days of request	\$25.00 per incident.
12.	Failure to implement or maintain the vector control management program specified in Attachment K	\$25.00 per day.
13.	Failure to collect Recyclables at an eligible Single Family Dwelling unit on a scheduled collection day, when number of reported &/or documented failures is: 3-6% of units scheduled for that day greater than 6% of units scheduled for that day	\$15.00 per missed pick-up \$25.00 per missed pick-up
14.	Failure to maintain proof of continual compliance with Agreement's insurance and performance bond requirements	\$100.00 per coverage requirement per calendar day
15.	Failure for collection and transport vehicles to use designated truck routes when leaving and returning to Contractor's facilities.	\$25.00 per incident and \$100.00 per incident if within ten (10) business days the same vehicle is again in violation
16.	Failure to maintain current DMV registration for any vehicle used for in performance of this Agreement	\$100.00 per vehicle per calendar day
17.	Multi-family collection service audit shows that greater than 5% of multi-family accounts sampled are not being provided with Multi-Family Collection Service	One-time assessment of 1 percent of total monthly payment to Contractor for Multi Family Dwellings* for EACH percentage point above 5% * based on most recent monthly invoice received by City prior to date of assessment
18.	Failure to leave empty oil jugs after collection of full containers within twenty four (24) hours, or by 6 p.m. on next business day (including Saturday), after a missed jug replacement order is given to Contractor	\$25.00 per incident
19.	Use of a non-permitted facility or non-exempt facility by CWS to perform the services set forth in Article 4.00 and Article 7.00	\$1,000 per day

Attachment J
Declaration of Compliance with the Americans with Disabilities Act

Attachment K
Local and Small Local Business Enterprise Program

Attachment L
Professional Services Questionnaire

Attachment M
Project Consultant Team

Attachment N
Employment Questionnaire

Attachment O
Local Employment Program

Attachment Not Used

Attachment P
Independent Contractor Questionnaire

Attachment Q
Living Wage Ordinance Declaration of Compliance

Attachment R
Acknowledgment of Campaign Contribution Limits Form

Attachment S
Equal Benefits Declaration of Nondiscrimination

Attachment T
Nuclear Free Zone Disclosure Form

Attachment U
List of all Current Permits held by Contractor for Operation of Facilities

Agency	Permit/License	Facility	Expiration	Number
City of Oakland	Business Tax Certificate	Tenth St.	12/31/04	182931
City of Oakland	Business Tax Certificate	Wood St. Street St.	12/31/04	1746669
California Board of Equalization	Use Fuel Tax	n/a	n/a	1978955
California Department of Conservation	DOC Certified Processor	Tenth St. Wood St.	6/30/05	PR0328
City of Oakland Fire Services Agency	Hazardous Materials Business Plan	Tenth St. Wood St.	Updated 3/18/03	n/a
City of Oakland Fire Services Agency	Fire Bureau Permit to Operate and Store	Tenth St. Wood St.	Filed unknown date	n/a
CAL EPA - California Department of Toxic Substance Control	EPA I.D. Number	Tenth St.	n/a	CAL000107864
CAL EPA - California Department of Toxic Substance Control	EPA I.D. Number	Wood St.	n/a	CAL000205445
California Regional Water Quality Control Board	Storm Water Pollution Prevention Plan and Permit	Tenth St.	n/a	WDID 2 01 L 017552
California Regional Water Quality Control Board	Storm Water Pollution Prevention Plan and Permit	Wood St.	n/a	WDID 2 01 L 017555
Bay Area Air Quality Management District	Permit to Construct and Operate Application	Tenth St.	8/1/05	09769
Bay Area Air Quality Management District	Permit to Construct and Operate Application	Wood St.	8/1/05	09768
City of Oakland CEDA	Conditional Use Permit	Tenth St.	n/a	92222
CAL OSHA	Air Compressor Permit	Tenth St.	Unknown	Unknown

Attachment V
Small Business Service Area

Attachment W Contractor Personnel

Collection Route Personnel
Collection Route Driver
Lead Collector
Processing Personnel
Processing Facility Manager
Processing Facility Supervisor/Foreman
Sorters
Equipment Operators (Forklift, loader)
Other
Repair/Maintenance Personnel
Shop foreman
Mechanics
Other Personnel
Chief Executive Officer
Chief Financial Officer
Chief Operations Officer
Customer Service -- collections
Multi-family Sales
Outreach
Collection Manager
Accounting
Human Resources
Accounts Receivable
Accounts Payable

Collection Route Driver Qualifications. All recycling collection route drivers shall be trained and qualified in the operation of collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use California Department of Motor Vehicles employer pull notice program to monitor its drivers for safety.

Collection Operations Supervision. Contractor shall maintain sufficient collection operations supervision to:

- a. Inspect recycling set outs on a regular basis;
- b. Interact with the public and provide feedback to Contractor management about service improvement opportunities;

- c. Ensure carts are returned to their upright positions, materials are not left on the street, and that employee conduct meets or exceeds company expectations; and
- d. Generally ensure high quality of service by collection personnel.

Customer Service Representative Training. Customer service representatives shall be trained on Contractor's specific Program services at a minimum of twice per year, and as necessary for new or newly assigned employees. Contractor shall maintain an adequate number of trained personnel at all times to ensure that Customer inquiries are addressed and resolved promptly and accurately. Contractor shall maintain and update training and reference materials that cover all service and Customer-related aspects of the Agreement, as well as general information about City's recycling programs. Customer service representatives shall have and use these materials and any other resources necessary to promptly and accurately address Customer inquiries.