

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

Between

THE CITY OF OAKLAND

And

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

6th Amendment

July 1, 2005

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 - B-3 Rates Effective July 1, 1997
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 - E-1 Locations Effective April 1, 1998
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 - F-7 Program Effective January 1, 2003
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 - F-10 Program Effective January 1, 2005
- G. Community Education and Outreach Plan

- H. Reporting Requirements
- I. Exhibit deleted by Fifth Amendment to Franchise Agreement
- J. Faithful Performance Bond and Letter of Credit
 - J-1 Performance Bond dated December 18, 2003
 - J-2 Performance Bond dated November 29, 2004
- K. Guaranty by WMX TECHNOLOGIES, INC.
 - K-1 Guaranty by WASTE MANAGEMENT HOLDINGS, INC., dated August 9, 2006
- L. Hazardous Waste Exclusion Program and Policies
 - L-1 Contractor's Hazardous Waste Exclusion Program
- M. Implementation Plan Schedule and Summary Effective December 1, 1995
 - M-1 Capital Listing Schedule
 - M-2 Implementation Plan Effective January 1, 2005
- N. List of Transfer Station, Material Recovery Facility, Processing Facility and Disposal Facility Permits as of December 1, 1995
 - N-1 List of Transfer Station, Material Recovery Facility, Processing Facility and Disposal Facility Permits Applied For (In Process)
 - N-2 List of Transfer Station, Material Recovery Facility, Processing Facility and Disposal Facility Permits as of July 1, 2005
- O. Volume to Weight Conversion Factors
- P. Local and Small Business Enterprise Program
- Q. Local, Minority and Women Business Enterprise Purchasing Program
- R. List of Closure/Post Closure Maintenance Plans
- S. Curbside Service Exemption
- T. Contractor's Service Areas
- U. List of City Facilities with WMAC Recycling Service
- V. Recycling Reporting Requirements
- W. Non-Targeted Recyclable Materials
- X. Declaration of Compliance with the American with Disabilities Act

- Y. Living Wage Ordinance Declaration of Compliance
- Z. Equal Benefits Declaration of Nondiscrimination
- AA. Acknowledgement of Campaign Contribution Limits Form
- BB. Nuclear Free Zone Disclosure Form
- CC. Small Business Subscription Rates
- DD. Supplemental Agreement dated December 2, 1995
- EE. First Amendment to Supplemental Agreement dated July 1, 1996
- FF. Settlement Agreement dated July 26, 1996
- GG. Second Settlement Agreement dated March 1, 1999
- HH. First Amendment to Franchise Agreement dated October 1, 1997
- II. Second Amendment to Franchise Agreement dated March 1, 1998
- JJ. Third Amendment to Franchise Agreement dated March 1, 1999
- KK. Fourth Amendment to Franchise Agreement dated February 1, 1998
- LL. Fifth Amendment to Franchise Agreement dated January 1, 2005
- MM. Settlement Agreement and Release dated July 29, 2003
 - MM-1 Resolution No. 77962 C.M.S. dated July 15, 2003
- NN. Ordinance No. 11820 C.M.S. Authorizing Franchise Agreement
 - NN-1 Ordinance No. 12421 C.M.S. dated June 11, 2002
 - NN-2 Ordinance No. 12499 C.M.S. dated May 29, 2003
 - NN-3 Ordinance No. 12524 C.M.S. dated July 29, 2003
 - NN-4 Ordinance No. 12604 C.M.S. dated June 15, 2004
- OO. Resolution No. 77500 C.M.S. Establishing 75% Waste Reduction Goal by 2010
- PP. Adjustment to Franchise Fee, City Fees and Residential Recycling Rate
 - PP-1 Franchise Fee, City Fees and Residential Recycling Rate Effective July 1, 2000
 - PP-2 Franchise Fee, City Fees and Residential Recycling Rate Effective July 1, 2001

- PP-3 Franchise Fee, City Fees and Residential Recycling Rate Effective July 1, 2002
- PP-4 Franchise Fee, City Fees and Residential Recycling Rate Effective July 1, 2003
- PP-5 Franchise Fee, City Fees and Residential Recycling Rate Effective July 1, 2004
- PP-6 Franchise Fee, City Fees and Residential Recycling Rate Effective July 1, 2005

- QQ. Letter from City Administrator Designating City Representative

- RR. Professional Services Questionnaire

- SS. Project Consultant Team

- TT. Employment Questionnaire

- UU. Business Tax Certificate

- VV. Independent Contractor Questionnaire

- WW. Affirmative Action Program Statement on Policy

- XX. Certificate of Insurance

- YY. Alameda County Measure D

FRANCHISE AGREEMENT FOR INTEGRATED SOLID WASTE MANAGEMENT SERVICES

This Franchise Agreement ("Agreement") by and between the City of Oakland, a municipal corporation, (the "City") and Waste Management of Alameda County, Inc., a California corporation (the "Contractor") is made and entered into as of the 1st day of December, 1995. Said Agreement has been amended by (1) the Supplemental Agreement dated December 2, 1995 and attached to this Agreement as Exhibit DD; (2) the First Amendment to Supplemental Agreement dated July 1, 1996 and attached to this Agreement as Exhibit EE; (3) the Settlement Agreement dated July 26, 1996 and attached to this Agreement as Exhibit FF; (4) the Second Settlement Agreement dated March 1, 1999 and attached to this Agreement as Exhibit GG; (5) the First Amendment to Franchise Agreement dated October 1, 1997 and attached to this Agreement as Exhibit HH; (6) the Second Amendment to Franchise Agreement dated March 1, 1998 and attached to this Agreement as Exhibit II; (7) the Third Amendment to Franchise Agreement dated March 1, 1999 and attached to this Agreement as Exhibit JJ; (8) the Fourth Amendment to Franchise Agreement dated February 1, 1998 and attached to this Agreement as Exhibit KK; (9) the Fifth Amendment to Franchise Agreement dated January 1, 2005 and attached to this Agreement as Exhibit LL; and (10) the Settlement Agreement and Release dated July 29, 2003 and attached to this Agreement as Exhibit MM. The Agreement and all subsequent amendments thereto have been incorporated into this Franchise Agreement for Integrated Solid Waste Management Services dated July 1, 2005.

RECITALS

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

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

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

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

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

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

Whereas, in 1990, Alameda County voters passed Measure D, attached as Exhibit YY establishing the Alameda Source Reduction and Recycling Board and setting a county-wide 75% solid waste diversion goal; and

Whereas, the City on October 29, 2002 passed Resolution No. 77500 C.M.S., attached as Exhibit OO, to adopt a goal of 75% reduction of waste going to landfills by 2010 in support of the Measure D goal, and the implementation date established by the Alameda County Source Reduction and Recycling Board; and

Whereas, the City intends to comply with the requirements of AB 939 and Resolution No. 77500 C.M.S. for the diversion of waste from landfill disposal, and to effectuate the City's own waste reduction strategy; and

Whereas, the City wishes to maximize cost effective waste reduction, recycling and composting in order to comply with AB 939 and Resolution No. 77500 C.M.S. and to promote resource conservation; and

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

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

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

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

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

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

Whereas, the City has the authority, pursuant to City Charter Section 1000, to grant or issue franchises for the transaction of business, providing of services or for the

use of public streets or other public places, and to assess fees or other compensation to be paid therefore and the penalties for violations thereof; and

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

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

Whereas, the City and Contractor have agreed to terminate the Franchise Agreement dated November 21, 1978 and the Street Litter Container Agreement and enter into this new Agreement in order to meet the AB 939 and Resolution No. 77500 C.M.S. goals and provide expanded and more cost effective Solid Waste handling services; and

Whereas, Ordinance No. 11820 C.M.S., attached to this Agreement as Exhibit NN, authorized the City Manager to integrate the Residential Recycling Services Agreement, as amended, into the Franchise Agreement for Integrated Solid Waste Management Services; and

Whereas, the City and Contractor agree that it is in the best interest of both parties to integrate all of the changes made to the Franchise Agreement between December 1, 1995 and July 1, 2005 into a comprehensive document to constitute the entire understanding and agreement of the City and Contractor with respect to the services to be provided under this Agreement.

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

ARTICLE 1.00 – DEFINITIONS

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

1.1 AB 939. The California Integrated Waste Management Act (Public Resources Code Sections 40000 et seq.), as amended, including rules and regulations

promulgated thereunder as amended, which among other things, requires each city and county to divert twenty-five percent (25%) of its waste stream from landfill disposal by December 31, 1995, and to divert fifty percent (50%) of its waste stream from landfill disposal by December 31, 2000.

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

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

1.4 Base Component. That portion of the Disposal Costs that represents Contractor's capital and operating costs, general and administrative costs for disposal of Solid Waste at the Disposal Facility. These costs, as of July 1, 1995, are shown on Exhibit C. These costs, as of July 1, 2005, are shown on Exhibit C-1 and each subsequent change in the Base Component shall be sequentially numbered and attached hereto.

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

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

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

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

1.9 City Facilities. List of City-owned or operated sites and facilities as of December 1, 1995, which may be amended from time to time, attached as Exhibit D to this Agreement. The list of City Facilities as of July 1, 2005 is attached as Exhibit D-1 and each subsequent change in the list shall be sequentially numbered and attached hereto.

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

1.11 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 representative to the Contractor regarding the requirements of this Agreement, and shall notify Contractor of the scope of his/her representatives' authority to act in those matters.

1.12 Composting Materials. Organic material such as vegetable, fruit, yard, tree, and wood discards, which through the course of controlled biological decomposition, degrades into compost.

1.13 Construction Debris. Waste building materials resulting from construction, remodeling, repair or demolition operations.

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

1.15 Contaminant. Non-recyclable materials either accidentally or mistakenly collected in the Program or created during Processing, which must be removed from the Targeted Recyclable Materials during Processing in order to make those materials marketable.

1.16 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.

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

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

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

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

1.21 Effective Date. Shall be December 1, 1995.

1.22 Fees Component. That portion of the Disposal Costs which consists of federal, state and local taxes and fees (other than income or franchise taxes or the like) imposed on the disposal of Solid Waste at the Disposal Facility. All such taxes and fees in effect, and their amounts as of July 1, 1995, are shown on Exhibit C. The taxes and fees currently in effect, and their amounts as of July 1, 2005, are shown in Exhibit C-1 and each subsequent change in the Fees Component shall be sequentially numbered and attached hereto.

1.23 Force Majeure. Riots, wars, civil disturbances, insurrections, epidemics, hurricanes, earthquakes, floods, fire, acts of God, government orders and regulations, and other similar catastrophic events which are not the fault of and beyond the reasonable control of the City or Contractor. Labor unrest, including but not limited to strikes, work stoppages or slowdowns, sickouts, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor shall also constitute events of force majeure.

1.24 Hazardous Waste. For purposes of this Agreement, Hazardous Waste shall include those wastes defined as Hazardous Waste in Oakland Municipal Code Section 6-4.01 or as subsequently amended. Section 6-4.01 currently defines Hazardous Waste as any hazardous waste, material, substance or combination of materials which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or may pose a substantial present or potential risk to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed; and which requires special handling under any present or future federal, state or local law, excluding de minimis quantities of waste of a type and amount normally found in residential Solid Waste after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Sections 41500 and 41802 of the California Public Resources Code.

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

California statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air, surface waters, groundwater, soil or other media contaminated with such substances.

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

1.25 Local Emergency. The proclamation by the City Council, or by an official so designated by the City Council, of the existence of conditions of disaster or of extreme peril to the safety of persons and property within the City which are likely to be beyond control of the services, personnel, equipment, and facilities of the City and require the combined forces of other political subdivisions to combat.

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

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

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

1.29 Multifamily Recycling Collection Service. Collection containers are present and properly labeled and Contractor attempts to provide weekly service from the designated service location.

1.30 Non-Recyclable Contaminant. Any material that is not a Targeted Recyclable Material or a Non-Targeted Recyclable Material collected in the Program.

1.31 Non-Targeted Recyclable Materials. Any Recyclable Material listed in Exhibit W that is not allowable for collection in the Program that Contractor can and does recover through Processing and returns to the economic mainstream. Contractor may refuse to collect or accept Non-Targeted Recyclable Materials and shall notify the Customer in writing why the collection was not made.

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

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

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

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

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

1.37 Plastic Containers. Narrow neck PET (#1), HDPE (#2), PVC (#3), LDPE (#4), PP (#5), PS (#6) and Other (#7) plastic containers.

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

1.39 Processing. The act of preparing source separated or commingled Recyclables into homogeneous types of materials that are in a form suitable to be marketed to end-users.

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

1.41 Processing Residue. 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.

1.42 Program. The City of Oakland's Residential Recycling Program.

1.43 Public Education. Any information (whether written or otherwise) directed by Contractor to Customers regarding the programs and services provided under the Agreement and shall be subject to the prior review and approval of the City. The party proposing to make such communication shall make reasonable good faith efforts to consult with the other party to ensure accuracy and consistency with the requirements and spirit of the Agreement.

1.44 Rates. The unit rates to be charged to Customers by Contractor for providing Recycling, Solid Waste and Yard Waste collection and disposal services to Customers, as set forth in Exhibit B-1, and as they may be adjusted from time to time in accordance with this Agreement. Each subsequent change in Rates shall be sequentially numbered and attached hereto.

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

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

1.47 Recycling Bag. A clear plastic bag large enough to line a 40-gallon container and thick enough to hold 40 gallons of Recyclables without breaking.

1.48 Residential Food Scraps. Vegetable, fruit, grain, fish and other food scraps including meat, bones, dairy products, cooking fats, oil and grease; paper and cardboard that have been contaminated with food, cooking fats, oil or kitchen grease; compostable paper associated with food preparation or food consumption such as paper towels, paper plates, paper coffee cups, tissue, waxed paper and waxed cardboard; and other materials designated by the City and Contractor that are capable of being composted, that would otherwise be disposed as Solid Waste, and that are set out separate from Solid Waste for collection as Yard Waste and then returned to the economic mainstream in the form of commodities such as, but not limited to, compost, soil amendments, mulch, animal feed and fertilizer.

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

1.50 Service Area. The geographical area in which the City authorizes Contractor to provide residential recycling service.

1.51 Single Family Dwelling. Any residential structure that has four or fewer living units within it and/or those residential structures that use can service for Solid Waste collection.

1.52 Small Business. A business located within the Service Area of Contractor and (a) uses 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 but without any special consideration or privileges other than those provided to the dwelling unit.

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

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

1.55 Targeted Recyclable Materials. Those Recyclables collected in the Program and shall be:

- (a) newspaper;
- (b) mixed waste paper (including magazines, telephone books, chipboard, corrugated cardboard, junk mail, and high grades);
- (c) glass containers;
- (d) metal containers (ferrous, non-ferrous, and bi-metal containers, including empty aerosol containers);
- (e) aluminum foil and pie plates;
- (f) milk and juice cartons (aseptic packaging);
- (g) all narrow neck rigid plastic containers (labeled as number 1 through 7); and
- (h) used motor oil and used motor oil filters (except for Small Business Recycling Program).

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

1.56 Term. The Term of this Agreement, which shall begin on the Effective Date and shall end at midnight on December 31, 2012.

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

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

1.59 Unacceptable Waste. Any and all waste, including but not limited to Hazardous Waste and Medical Waste, the acceptance or handling of which would cause a violation of any permit condition or legal or regulatory requirement, substantial damage

to Contractor's equipment or facilities, or present a substantial endangerment to the health or safety of the public or Contractor's employees; provided that de minimis quantities or waste of a type and amount normally found in residential Solid Waste after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Sections 41500 and 41802 of the California Public Resources Code shall not constitute Unacceptable Waste.

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

1.61 Yard Waste. Prunings, brush, leaves, grass clippings, Residential Food Scraps and such other similar types of organic waste that may be mutually agreed upon by the City and Contractor. Untreated and unpainted wood that fits within the Yard Waste container is also Yard Waste.

ARTICLE 2.00 – REPRESENTATION AND WARRANTIES OF CONTRACTOR

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

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

2.2 Corporate Authorization. Contractor has full legal right, power, and authority to execute, deliver, and perform this Agreement, and has duly authorized the execution and delivery of this Agreement by all necessary and proper action by its Board of Directors, or by its shareholders, if necessary.

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

2.4 No Conflict with Applicable Law or Other Documents. Neither the execution and delivery by Contractor of this Agreement, nor the performance by Contractor of its obligations hereunder (i) conflicts with, violates or will result in a violation of any existing applicable law; (ii) conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing agreement or instrument to which Contractor is a party, or by which Contractor or any of Contractor's properties or assets is bound.

2.5 No Litigation. There is no action, suit, proceeding or, to the best of Contractor's knowledge, investigation at law or equity, before or by any court or governmental entity, pending or threatened against Contractor or otherwise affecting

Contractor, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect Contractor's performance hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Contractor.

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

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

2.8 Contractor's Investigation. Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement, its content and preparation, the work to be performed by Contractor under the Agreement, and warrants that the Agreement accurately and fairly represents the intentions of Contractor, and enters into this Agreement on the basis of that independent investigation.

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

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

issued by National Guaranty Insurance Company. Contractor may change either or both of these mechanisms to another legally authorized mechanism if the change is approved by the California Integrated Waste Management Board.

ARTICLE 3.00 – TERM AND SCOPE OF FRANCHISE

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

3.2 Term. The Term of this Agreement shall begin on the Effective Date and shall end at midnight on December 31, 2012.

3.3 Option to Extend Term. The City may extend the 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 of no less than eighteen (18) months of its intent to exercise its extension option. At the expiration of the Term, this Agreement may be continued on a month-to-month basis with the mutual consent of the City and Contractor for up to a maximum of twelve (12) months.

3.4 Conditions to Effectiveness of Agreement.

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

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

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

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

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

3.4.1.5 Implementation Plan. Contractor shall submit, no later than August 1, 2004, subject to review and approval by the City, a detailed implementation plan to switch to weekly Recycling and Yard Waste collection and to add a Residential Food Scraps program, that addresses all foreseeable start-up issues, which shall be included as Exhibit M-2. Contractor shall also include with the submission, any

Solid Waste and Yard Waste collection route changes contemplated during the implementation period of this Agreement that would affect the City's obligation to share this information with the holders of its Recycling Agreements. Contractor shall not commence the delivery of Single Stream containers prior to January 17, 2005. It is understood that Contractor and the City may mutually agree to make changes to Exhibit M-2. The City's approval of the implementation plan shall not be unreasonably withheld.

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

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

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

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

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

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

- (a) Source Separate Recyclables, including but not limited to those collected by a Person under contract to the City and those collected through private arrangements between the generator and the collection company, which are recycled at a recycling facility that holds all applicable permits; provided, however, that (i) loads which consist of mixed paper and which contain more than ten percent (10%) by weight of non-recyclable materials shall not be considered Source Separate Recyclables, and (ii) loads which consist of commingled Recyclables other than mixed paper and which contain more than five percent (5%) by weight of non-recyclable materials shall not be considered Source Separated Recyclables;
- (b) Construction Debris (i) removed from a Premises by a licensed contractor as an incidental part of a total construction, remodeling or demolition service offered by that contractor, rather than as a separately contracted or subcontracted hauling service using debris boxes or similar apparatus, or (ii) directly loaded onto a fixed body vehicle and hauled directly to a transfer station or disposal facility that holds all applicable permits;
- (c) lawn and garden trimmings (i) removed from a Premises by a contractor as an incidental part of a total gardening or landscaping service offered by that contractor, rather than as a separately contracted or subcontracted hauling service using debris boxes or similar apparatus, or (ii) directly loaded onto a fixed body vehicle and hauled directly to a transfer station or disposal facility that holds all applicable permits;
- (d) animal waste and remains from slaughterhouses and butcher shops, or grease waste for use as tallow;
- (e) by-products of sewage treatment, including sludge, grit and screenings;
- (f) Solid Waste, Yard Waste or Recyclables collected and transported by City crews to the Disposal Facility, Material Recovery Facility, Processing Facility or Transfer Station;
- (g) Solid Waste hauled directly to a Transfer Station or Disposal Facility by a Person who is also the generator of the Solid Waste; and
- (h) Recyclables that are donated to a youth, civic or charitable organization.

This grant to Contractor of an exclusive franchise, right and privilege to collect, transport, process, or dispose of Solid Waste and Yard Waste shall be interpreted to be consistent with federal and state laws, now and during the Term. The scope of this exclusive franchise shall be limited by current and developing state and federal laws with regard to Solid Waste handling, exclusive franchise, control of Recyclables, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, or enactment of new laws limit the ability of the City to lawfully provide for the scope of franchise services as specifically set forth herein, Contractor agrees that the scope of the

franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by Contractor to arise out of further limitations of the scope of the franchise as set forth herein. In such event, it shall be the responsibility of Contractor to minimize the financial impact to other services being provided as much as commercially feasible.

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

ARTICLE 4.00 – SERVICES TO BE PERFORMED BY CONTRACTOR

4.1 General. Contractor shall perform Solid Waste and Yard Waste collection, processing and disposal services as described in this Agreement, including but not limited to paying the costs associated with obtaining and complying with all permits and approvals, landfill operations, closure and post-closure maintenance and remediation in consideration of the right to charge and collect the Rates in the amounts and on the terms set forth in this Agreement. Contractor shall provide all labor, materials, equipment, supplies, supervision and other items necessary for the performance of the services under this Agreement. The enumeration of, and specifications of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated or not. The work to be performed by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and Businesses within the City are provided reliable, courteous and high-quality Solid Waste and Yard Waste collection, processing and disposal service at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided for in this Article, whether such other aspects are enumerated elsewhere in this Agreement or not. Contractor shall perform all work in accordance with Exhibit A, all provisions of which are incorporate herein whether or not such provisions are specifically referred to in any other section of this Agreement. Contractor shall also provide recycling Program services subject to the conditions and requirements set forth in Article 18.00.

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

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

4.2.1 Curbside Service. Contractor shall provide for the weekly curbside collection of Solid Waste from Single Family Dwellings at the level of service subscribed (20 gallon mini-cans, 35, 64 or 96 gallon containers) plus Bag-Its.

4.2.1.1 Curbside Placement Exemption. Contractor and the City have jointly developed curbside placement exemption criteria for Customers who have no viable options for curbside placement of Solid Waste and Yard Waste containers. Customers meeting the criteria shall be granted a twelve (12) month exemption and shall not have to pay an additional charge for backyard service. If less than two percent (2%) of the total number of Customers meet the established curbside placement exemption criteria, the eligible Customers shall continue to receive backyard service at the end of the initial twelve (12) month exemption period at no additional charge. If the number of Customers meeting the established criteria exceeds two percent (2%), the City and Contractor shall meet and discuss the impact on Contractor to provide such backyard service and any rate adjustment that may be necessary. Contractor shall continue to provide backyard service to qualifying Customers during such discussion period.

To receive a curbside placement exemption the Customer must meet one of the following criteria:

- (a) the subject property does not have parcel frontage contiguous to a public right-of-way accessible to Contractor's collection vehicle and is either more than 100 feet from the closest public right-of-way or is only accessible from an unpaved or steep (20% grade or more) access easement or driveway;
- (b) there are 20 stairs or more to all public right-of-way points and no storage location at street level;
- (c) there is no location at the curb or in the street to place containers without blocking the public right-of-way; or
- (d) the requirements to bring the containers to the curb would place an undue burden on the Customer as determined by the City and Contractor.

Contractor and the City shall field review all exemption requests and meet with the Customer if necessary. Contractor shall notify the Customer in writing of the granting or denial of the exemption request.

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

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

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

4.2.5 City Facilities. Contractor shall provide collection, without charge, of Solid Waste generated at City-owned or operated sites and facilities, a listing of which as of July 1, 2005 is set forth in Exhibit D-1, which list may be reasonably modified by notice provided to Contractor by the City. The City assures Contractor that during the Term, the City shall not add facilities owned and operated by the Oakland Unified School District, the Oakland Housing Authority or the Port of Oakland to the list without approval of Contractor.

4.2.6 City Delivered Materials. Contractor shall accept dirt and debris, Solid Waste, White Goods, Yard Waste and Recyclables collected by City crews and delivered by City vehicles to the Disposal Facility, Transfer Station or Processing Facility. Contractor shall weigh City vehicles delivering materials to Contractor's facilities. The total tonnage of materials delivered by the City pursuant to this Section and Section 4.3.5 without charge shall not exceed 15,000 tons per calendar year. Separated Recyclable materials delivered by City crews to any of Contractor's facilities shall not be counted towards the tonnage allowance established pursuant to this Section. In January of each year, the City Representative and Contractor shall establish the rate per ton that the City must pay or be paid during the calendar year for the delivery of Recyclables to Contractor. The amount of tonnage allowed shall be increased by three percent (3%) per year during the Term, with the first increase occurring on January 1, 1997. On January 2, 2005 the City shall receive an additional allowance of 1,300 tons to be credited against the total tonnage allowances for 2004 and 2005. The total tons to be delivered to Contractor's facilities during the 2004 calendar years shall be 20,302 tons and during the 2005 calendar year it shall be 20,872 tons. The 2005 total tons shall be increased by three percent (3%) per year on January 1 during the remaining Term or any extended Term. If the total tonnage of Sections 4.2.6 and 4.3.5 exceeds the maximum tonnage then allowed, the City shall pay Contractor for the disposal of the excess tonnage as follows: (i) if the excess tonnage is less than the total tonnage of Yard Waste delivered during the year in question, the City shall pay Contractor the gate rate at the Processing Facility for Yard Waste and (ii) if the excess tonnage exceeds the total tonnage of Yard Waste delivered during the year in question, the City shall pay the gate rate for Solid Waste for the portion of the total tonnage which exceeds the amount of Yard Waste delivered. The Rates charged for these services shall be those shown in Exhibit C-1, which will increase pursuant to Sections 15.3 and 15.4.

4.2.6.1 Calculation and Payment of Excess Tonnage Value. Contractor shall notify the City if it determines that the City has delivered materials to Contractor in excess of the maximum tonnage allowed pursuant to Section 4.2.6. Within thirty (30) days of such notice, Contractor and the City Representative shall review and calculate the value of the excess materials delivered, in accordance with the provisions of Section 4.2.6 and using the disposal fee component set forth in Exhibit C-1, as adjusted. The City shall pay Contractor for the value of the excess tonnage within thirty (30) days of the determination of value.

4.2.7 Street Litter Container Service. Contractor shall provide, without charge, Solid Waste collection from City-owned street litter containers, a listing of which is set forth in Exhibit E, which list may be reasonably modified by notice provided to Contractor by the City, on a collection cycle determined by the City. Each subsequent change in the list of street litter containers shall be sequentially numbered and attached hereto. The initial list provided by the City as of December 1, 1995 contains 689 locations and specifies the collection frequency. The City may add additional locations to the list between the Effective Date and December 31, 1995 up to a maximum of 750 locations and make reasonable changes in the service frequency. Contractor shall be obligated to provide collection services for up to 75 new containers added by the City during each calendar year commencing on January 1, 1996 during the Term according to the procedures set forth in Exhibit E. Contractor shall provide a label in three languages (English, Spanish, Chinese) to be affixed to the containers warning users against placing household or commercial Solid Waste in the container. The City will maintain and replace existing containers on an as needed basis and be responsible for the purchase of containers for new service locations. If requested by the City, Contractor shall purchase and provide street litter containers meeting the City's specifications. The City shall be responsible for receipt, storage and placement of the containers at new service locations. The City shall reimburse Contractor for any containers purchased within thirty (30) days of the submittal of an invoice to the City.

4.2.8 Neighborhood and Community Event Service. Contractor shall provide, without charge, delivery and pickup of one hundred and eight (108) 30-yard debris boxes, or the equivalent, for neighborhood and community events each calendar year as requested by the City Representative. Any unused portion of this allowance shall carry forward to succeeding calendar years, up to a maximum of 216 30-yard debris boxes that must be provided in any one year. The City may request the delivery of one debris box per year for placement at Feather River Camp over the Memorial Day weekend. Contractor shall arrange for placement and servicing of said debris box at no charge to the City.

4.2.9 Bulky Goods Service. Contractor shall provide Bulky Goods collection and processing in accordance with the Bulky Goods Program set forth in Exhibit F, including one Bulky Goods collection per year per residential account of one to four units. The City and Contractor have revised the Bulky Goods Program and said revisions are set forth in Exhibits F-1 through F-10. Pursuant to the Settlement Agreement and Release dated July 29, 2003 and attached to this Agreement as Exhibit MM, the City and Contractor agree to modify the Bulky Goods Program to be an on-call service. A copy of the revised program for 2005 is set forth in Exhibit F-10 and subsequent revisions of the program during the Term of this Agreement shall be sequentially numbered and attached hereto. Contractor shall make a reasonable good faith effort to reuse Bulky Goods as is or disassemble Bulky Goods for reuse and recycling prior to transferring Bulky Goods to the Disposal Facility. Bulky Goods should be processed in a manner consistent with all local, state and federal regulations.

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

shall be responsible for notifying Customers of the proper set out requirements for holiday trees in accordance with the guidelines set forth in Exhibit G.

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

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

4.2.13 Service Level. Contractor shall monitor the service level subscribed to by Business Customers, and, if and when it appears that the Customer has subscribed to container service less than the volume of Solid Waste actually produced by the Customer, provide notice to the Customer that a different level of service is either available or required, as applicable. After the Contractor has sent three (3) letters to a Customer over a three (3) month period to inform the Customer that an increased level of service is required, Contractor shall notify the City. The City shall send a letter to the Business Customer informing the party of a possible violation of Sections 8.28.110 and 8.28.120 of the Oakland Municipal Code.

4.3 Yard Waste Collection. Contractor shall be responsible for ensuring that Yard Waste collected pursuant to this Section shall be kept separate from Solid Waste after collection. Contractor agrees that collected Yard Waste will be recycled through composting, mulching or applying directly to land. Contractor shall notify the City, and receive the City's consent, before using Yard Waste for alternative daily landfill cover, transformation, biomass fuel production or any other use which might result in the City receiving less than full credit for such Yard Waste toward compliance with AB 939 waste diversion goals. Contractor shall not dispose as Solid Waste, any separately collected Yard Waste without prior written approval of the City. Without limiting Contractor's obligations under this Agreement, the Yard Waste collection services shall be performed by Contractor in accordance with the Performance Standards set forth in Exhibit A.

4.3.1 Curbside Service. Contractor shall provide for the weekly curbside collection, transportation and processing of an unlimited amount of Yard Waste generated from Single Family Dwellings. Contractor shall provide each Single Family Dwelling with a container having a capacity of up to 64 gallons. Residents of Single Family Dwellings may set out additional Yard Waste each week in recyclable 32-gallon paper gardening bags not exceeding 75 pounds in weight. Branches and unpainted/untreated wood must be bundled and not exceed four feet (4') in length or six inches (6") in diameter. Contractor may limit the amount of Yard Waste to be collected from a Single Family Dwelling to 64 gallons per week if it is able to show to the satisfaction of the City that the Customer is disposing of Yard Waste generated from another location.

4.3.2 Backyard Service. Contractor shall provide backyard Yard Waste collection service for (i) frail senior citizens and disabled individuals at no additional charge, in accordance with the requirements set forth in Exhibit S, (ii) Customers who have no viable options for curbside placement of containers, and (iii) other Customers paying an additional charge for backyard service. Contractor shall be responsible for determining who receives backyard service, subject to guidelines approved by the City.

4.3.3 City Facilities. Contractor shall provide collection, transportation and processing, without charge, of Yard Waste generated at City-owned or City-operated sites and facilities, including without limitation, City parks, a listing of which is set forth in Exhibit D, which list may be reasonably modified by notice provided to Contractor by the City. The list of City Facilities as of July 1, 2005 is attached as Exhibit D-1. The City assures Contractor that during the Term, the City shall not add facilities owned and operated by the Oakland Unified School District, the Oakland Housing Authority or the Port of Oakland to the list without approval of Contractor.

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

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

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

4.3.7 Yard Waste Containers. Contractor shall provide, maintain and replace all containers and receptacles required for Yard Waste collection services. The five percent (5%) and two percent (2%) annual limits and charging, at cost, above the limits in Section 4.2.12 shall apply separately to Contractor's obligation to replace Yard Waste containers. Contractor will notify the City if an individual Customer has required replacement of containers more than twice in a twelve (12) consecutive month period. The City and Contractor will consult with each other (and with the Customer if deemed appropriate) to develop an appropriate response to the situation.

4.3.8 Public Education Materials. If requested by the City, Contractor shall prepare public education materials to publicize changes to the Yard Waste Program, including the introduction of Residential Food Scraps recycling. The budget for said public education materials shall be set by the City in consultation with Contractor. The City shall reimburse Contractor for Residential Food Scraps recycling public education materials in an amount to be agreed upon by the parties. All materials are subject to review and approval of the City in accordance with the guidelines set forth in Exhibit G and are in addition to other public education requirements of Contractor set forth in this Section. Contractor shall spend a minimum of Sixty-five Thousand Dollars (\$65,000) on public education activities during the first full calendar year of this Agreement and Thirty-five Thousand Dollars (\$35,000) per year in each subsequent year, the latter amount to be increased by the same percentage, if any, that Rates are increased pursuant to Section 15.3. As of January 1, 2005 the amount to be spent during the 2005 calendar year is Forty-five Thousand Nine Hundred Twelve Dollars and Five Cents (\$45,912.05).

4.3.9 Residential Food Scraps Containers. Contractor shall provide and distribute to each living unit in a Single Family Dwelling a container of approximately 2.5 gallons with a lid and handle to be used to temporarily store Residential Food Scraps prior to placing such material in the Yard Waste collection container. The City shall approve the manufacturer's specifications for the container prior to purchase and distribution to the Single Family Dwellings. Contractor shall affix a decal on the container that lists the allowable Residential Food Scraps materials. The decals must be available in English, Spanish, Chinese and Vietnamese and any additional

language requested by the City for it to comply with its equal access ordinance requirements. The City shall pay the cost for the initial container delivered to each living unit in a Single Family Dwelling. After the initial distribution of containers, Contractor shall be solely responsible for the purchase and distribution of Residential Food Scraps containers when new Single Family Dwelling accounts are established.

4.3.9.1 Replacement Containers. In the event the Residential Food Scraps container is lost, stolen, damaged or destroyed, Contractor shall be responsible for providing a replacement container within one week of the request by the Single Family Dwelling or the City. Contractor shall be solely responsible for the purchase and distribution of replacement containers. During the remaining service Term of this Agreement, and any extended Term, Contractor shall be responsible for providing annual replacement containers totaling five percent (5%) of the number of Single Family Dwellings serviced. 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. Contractor shall notify the City if a 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 the Customer if deemed appropriate) to develop an appropriate response to the situation.

4.3.9.2 Residential Food Scraps Public Education Materials. The Residential Food Scraps container shall come with an instruction sheet, emphasizing use of the Residential Food Scraps program and program details. Residential Food Scraps processing and its environmental benefit shall be explained in sufficient detail and its collection shall be cited as being an essential component of the City reaching its AB 939 and Measure D diversion goals.

4.4 Solid Waste Disposal. Without limiting Contractor's obligations under this Agreement, Solid Waste disposal services shall be performed by Contractor at the Rates set forth in Exhibit B-1, as they may be amended. Subsequent amendments of the Rates during the Term of this Agreement shall be sequentially numbered and attached hereto.

4.4.1 Safe and Lawful Disposal. Contractor shall provide for the receipt, acceptance and safe and lawful disposal of Solid Waste collected in the City as provided in this Agreement, and Recyclables and Yard Waste if offered by Customers for disposal.

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

4.5 Other Services; Specialized Services. Contractor currently provides other Solid Waste and Yard Waste collection services for Customers not required by Sections 4.2 through 4.4, such as debris box drop off and pick up, collection and disposal of Bulky Goods at times other than the scheduled Bulky Goods collections provided for in Section 4.2.9. To the extent such special Solid Waste and Yard Waste services are within the scope of Contractor's exclusive franchise under this Agreement, the additional charge to the Customer for such services (i) shall be determined between Contractor and Customer prior to provision of the services, (ii) shall be established by reference to the Rate(s) for the most similar types of services covered in the then-existing Rate Ordinance, and (iii) at the request of the Customer shall be subject to review and approval or adjustment by the City.

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

4.6 Emergency Service. Contractor shall provide emergency services (i.e., special collections, transport, processing, disposal) at the City's request in the event of a declared local, State or federal state of emergency, major accidents, disruptions, or natural calamities. Contractor shall be capable of providing emergency services within twenty-four (24) hours of notification by the City, or as soon thereafter as is reasonably practical in light of the circumstances. An emergency number shall be accessible throughout the year, twenty-four (24) hours per day for the City Representative to contact Contractor. Emergency services shall be provided at Contractor's customary rates then in effect per the Oakland Municipal Code, or the Gate Fees at the Transfer Station or Disposal Facility as shown in Exhibit C-1, as adjusted pursuant to Sections 15.3 and 15.4, whichever is applicable.

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

4.7 Changes in Scope of Work.

4.7.1 General. 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. Contractor shall promptly and cooperatively comply with such directions and the Rates shall be adjusted to fairly and fully reflect the additional cost, or cost reduction, associated with the directed change in scope of services. The City's authority to delete existing services is not in derogation of Contractor's exclusive franchise rights, i.e., if a service is within the scope of the franchise is discontinued at the City's election under this section, the

City shall not allow a third party to perform it. If the City does delete such services, it will take into account in adjusting Rates not only Contractor's reduced operating costs, but also the impact of capital equipment no longer fully utilized, if Contractor provides financial information showing such impact. All sums that appear in this Section 4.7 are expressed in July 2005 dollars and will automatically be adjusted by changes in the Index from that date.

4.7.2 New Programs. Pilot programs and innovative services which may entail new collection methods or new requirements for waste generators are included among the kinds of changes the City may direct. Before directing a change in service that would affect Contractor's costs by more than \$670,000 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 affect on Rates, showing the assumptions used and explaining the basis for such assumptions; (vi) advantages and disadvantages of the change; and (vii) a recommendation as to whether the change should be implemented and, if so, an implementation schedule. Contractor will meet with 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 \$670,000 per year, Contractor shall implement the change in accordance with a schedule directed by the City. If a change in service will affect Contractor's costs by \$670,000 or more 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 Rates should be adjusted, Contractor shall implement the change in accordance with the schedule directed by the City. If the parties have not agreed but the change will not require Contractor to make a capital investment of more than \$3.35 million, Contractor shall also implement the change, the City shall adjust the Rates as it believes proper and Contractor may challenge the adequacy of such Rates as provided in Section 15.12. If the parties have not agreed, and the change will require Contractor to make a capital investment of more than \$3.35 million, then Contractor need not implement the change, but in such case the City may engage another Person to do so and may modify the scope of work under this Agreement accordingly. If the scope of work is modified pursuant to this Section 4.7, the bonding and insurance requirements set forth in Articles 11.00 and 12.00 shall be reviewed for their sufficiency and purpose.

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

collection and disposal services for the purpose of maximizing efficiency. Said changes will not be implemented without the written approval of the City.

4.8 Ownership of Solid Waste and Yard Waste. Ownership and right to possession of Solid Waste and Yard Waste placed in containers or bins or bundles for collection, or placed at curbside, shall transfer directly from the Customer to Contractor by operation of law. Contractor's arrangements with its Customers will provide that, subject to the right of the Customer to claim lost property, title and the right to possession, and liability for all Yard Waste and all Solid Waste, whether or not recyclable, which is set out for collection on the regularly scheduled collection day, or as a special collection, shall pass to Contractor at the time it is set out. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of or use Solid Waste or Recyclables that it collects. Solid Waste which is disposed of at a Disposal Facility or Facilities (whether landfill, transformation facility, Transfer Station or Materials Recovery Facility) shall become the property of the owner or operator of the Disposal Facility or Facilities once deposited there by Contractor. At no time does the City obtain any right of ownership or possession of Solid Waste placed for collection, and nothing in this Agreement shall be construed as giving rise to any inference that the City has any such rights, except as specified in Section 4.9.

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

4.10 Vehicles Used by Contractor. All vehicles used by Contractor to perform the services set forth in this Article shall comply with all current requirements, rules and regulations established or adopted as of January 1, 2005 by the California Air Resources Board (CARB), and any requirements, rules and regulations established or adopted after January 1, 2005 that are pursuant to the PROPOSED DIESEL PARTICULATE MATTER CONTROL MEASURE FOR ON-ROAD HEAVY-DUTY DIESEL-FUELED RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION VEHICLES ("the Proposed Rule") which was released by the CARB on June 6, 2003. The City and Contractor agree that the Rates are sufficient for Contractor to upgrade and retrofit its vehicles to be in compliance with said CARB requirements, rules and regulations dated June 6, 2003 and that the City shall not be required to increase the Rates for this purpose. Reimbursement of costs incurred by Contractor for future

change(s) to said requirements, rules and regulations shall be determined pursuant to Section 15.8.2.

ARTICLE 5.00 – HAZARDOUS AND UNACCEPTABLE WASTE

5.1 Hazardous and Unacceptable Waste.

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

5.1.2 Notice to Customers. Contractor shall notify on an ongoing basis all Customers of (i) the prohibition against the set out and delivery of Hazardous Waste and Unacceptable Waste and (ii) the obligation of each Customer to provide for the proper handling and disposition of Hazardous Waste and Unacceptable Waste. Contractor shall refuse to collect or accept any Hazardous Waste or Unacceptable Waste. Contractor shall notify the Customer in writing why the collection was not made and for the Customer to arrange for proper disposal. Contractor shall, prior to leaving the location, leave a tag at least 2"x6" which lists the telephone number for the Alameda County Household Hazardous Waste Program, including the reason for refusing to collect the waste.

5.1.3 Contractor to Segregate and Dispose. Contractor shall implement procedures to identify and reject waste materials delivered to its facilities that are Hazardous Waste, Designated Waste, Unacceptable Waste or which otherwise may not be legally accepted at its facilities under its existing permits and other applicable governmental regulations then in effect. Contractor shall segregate for disposition any Hazardous Waste or Unacceptable Waste that is identified after waste has been accepted or loaded, and shall not further process or transport such Hazardous Waste or Unacceptable Waste except to arrange for its transport and disposal to a properly permitted recycling, treatment or disposal facility of Contractor's choosing. Contractor shall be solely responsible for handling and arranging the transport and disposition of all Hazardous Waste and Unacceptable Waste that is collected or received by Contractor and the costs associated therewith. Nothing in this Section prohibits Contractor from making every reasonable effort to recover its special handling and disposal costs from the generator, and from the City if the City is the generator, of such Hazardous or Unacceptable Waste. Notwithstanding the foregoing, Contractor's recovery of such costs from the City is limited to costs specifically attributable to Hazardous or Unacceptable Waste generated by the City through its employees (acting within the ordinary course and scope of their employment), and Contractor waives any right to pursue a Claim against the City based on joint and several liability as to such Hazardous or Unacceptable Wastes.

5.1.4 Operating Procedures and Employee Training. Contractor shall establish, implement and maintain written operating procedures designed to insure

Contractor's compliance with the provisions of this Article 5.00. Contractor shall establish, implement and maintain an employee training program and shall ensure that employees responsible for the identification, removal, handling, transport and disposal of Hazardous Waste, Designated Waste and Unacceptable Waste are at all times fully trained. Contractor shall maintain documentation 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 forum. Contractor shall diligently and regularly inspect its properties for Hazardous Waste and shall immediately remove and remediate any Hazardous Waste that it knows has been spilled or deposited at any location during the course of its operations. Contractor shall be responsible for remediation of its facilities and other locations impacted by spills or releases and the cost of remediation incurred as a consequence of such spills or releases shall not be recoverable under this Agreement. Nothing in this Section prohibits Contractor from making every reasonable effort to recover its special handling and disposal costs from the generator, and from the City if the City is the generator, of such Hazardous Waste. Notwithstanding the foregoing, Contractor's recovery of such costs from the City is limited to costs specifically attributable to Hazardous Waste or Unacceptable Waste generated by the City through its employees (acting within the ordinary course and scope of their employment), and Contractor waives any right to pursue a claim against the City based on joint and several liability as to such Hazardous or Unacceptable Wastes. Contractor acknowledges and agrees that this Agreement does not provide the City, its agents, officers or employees with any control whatsoever over Contractor's compliance with environmental laws and regulations.

5.3 Record Keeping. Contractor shall create and maintain records 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.

5.4 Hazardous Waste Exclusion Program. During the Term, the City shall participate with appropriate regulatory and governmental agencies for the collection and proper disposal of household hazardous waste within the City, but nothing in this Agreement shall be construed as requiring the City to establish a specific program or to expend a specific amount of funds for such programs. The City shall take those measures reasonably necessary in compliance with law to exclude household hazardous waste from Solid Waste to be disposed of under this Agreement as set forth in Exhibit L attached hereto and incorporated by reference herein. Contractor has established, and will implement, a Hazardous Waste Exclusion Program that is set forth in Exhibit L-1 attached hereto and incorporated by reference herein. Notwithstanding the efforts of the

City and Contractor, the City makes no promise, and gives no guarantee, that Hazardous Wastes will not be delivered to the Disposal Facility.

ARTICLE 6.00 – CONTRACTOR’S FACILITIES

6.1 Disposal Facility.

6.1.1 Reservation of Disposal Capacity. Contractor shall reserve for and provide to the City permitted disposal capacity sufficient to dispose of all Solid Waste delivered to the Disposal Facility during the Term and any extensions thereof. Based upon information provided by Contractor of the current amount of Solid Waste collected in Oakland, which is disposed of at the Disposal Facility, and upon which information the City solely relies, Contractor shall reserve a minimum of 250,000 tons of disposal capacity for Solid Waste collected in Oakland during each year of the Term. Reservation of such disposal capacity by Contractor in no way whatsoever obligates the City to utilize all such reserved capacity, nor to pay any money to Contractor, nor increase Rates, if such reserved capacity is not used during any annual period. Reservation of the established disposal capacity shall also not modify Contractor’s obligation to provide any and all additional disposal capacity to meet its Solid Waste disposal duties and obligations to the City pursuant to this Agreement.

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

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

6.1.3 Disposition of Unauthorized Waste. Contractor shall implement procedures to identify and reject waste materials delivered to the Disposal Facility which are Hazardous Wastes, Designated Wastes or which otherwise may not be legally accepted at the Disposal Facility under the Disposal Facility’s permits and other applicable governmental regulations then in effect. Contractor shall implement such

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

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

6.1.5 Weighing. Contractor shall maintain an adequate scale system at the Disposal Facility. All scales and weighing equipment shall be kept in good and accurate condition operating at the standards of accuracy and reliability sufficient to provide information to the City in compliance with AB 939 reporting requirements. In the ordinary course, Contractor shall determine the amount of Solid Waste delivered to the Disposal Facility by reliance upon the records as to the weight of the vehicle and its contents recorded at the Transfer Station prior to its departure to the Disposal Facility. All vehicles of Contractor delivering Solid Waste to the Disposal Facility shall be weighed, and their weights recorded, if and when necessary to accurately measure tons of Solid Waste delivered. In the case of City vehicles delivering Solid Waste to the Disposal Facility that are required to be weighed, Contractor shall apply the volume to weight conversion factors set forth in Exhibit O, attached hereto and incorporated by reference herein.

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

6.2.1 Weighing. Contractor shall operate and maintain an adequate scale system at the Transfer Station. All scales and weighing equipment shall be kept in good and accurate condition operating at the standard of accuracy and reliability sufficient to provide information to the City in compliance with AB 939 reporting requirements. All vehicles of Contractor and the City delivering Solid Waste to the Transfer Station shall be weighed, and their weights recorded, so as to accurately measure tons of Solid Waste delivered. If the scales and weighing equipment at the Transfer Station are out of service, Contractor shall determine the amount of Solid Waste

delivered to the Transfer Station by utilizing the arithmetic average of that vehicle's recorded tons of Solid Waste delivered on its immediately preceding three (3) deliveries to the Transfer Station. In the case of City vehicles delivering Solid Waste to the Transfer Station that are required to be weighed, Contractor shall apply the volume to weight conversion factors set forth in Exhibit O, attached hereto and incorporated by reference herein. Contractor shall conduct additional weighing to calculate the amount of Solid Waste diverted at the Transfer Station and to allocate to the City its proportionate share of the diverted tonnage for AB 939 reporting.

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

New Year's Day
Labor Day

Easter Sunday
Thanksgiving Day

Fourth of July
Christmas Day

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

6.3 Processing Facilities. Contractor owns the Processing Facilities for Yard Waste and Recyclables. If Contractor becomes unable to perform its obligations at the Processing Facility, as required by this Agreement, as the result of causes beyond its control, that could not have been prevented by the exercise of due care, then Contractor shall notify the City immediately. Contractor shall immediately and diligently exert its best efforts to transfer Yard Waste and Recyclables in any lawful manner to properly permitted facilities (whether owned by it or not) and to obtain or arrange for any permits or licenses needed.

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

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

Section 6.1.2, 6.2 and 6.3. Notwithstanding the above, the City shall not unreasonably refuse a request for change in facility location made by Contractor.

6.5 City Redirection of Yard Waste. The City and Contractor recognize that Contractor intends to develop composting capability at Contractor's Altamont Landfill and Resource Recovery Facility. If and when said capabilities exist, Yard Waste and other compostable materials collected under this Agreement shall be directed to said processing facility, provided that the total transportation and tipping price, inclusive of all Contractor handling and processing charges, are Cost Competitive with alternative processing sites. For the purposes of this Section, Cost Competitive shall be defined as being within 10% of the lowest cost alternative processing site to which the City may redirect Yard Waste collected under this Agreement, pursuant to the conditions set forth in this Section. In the event that materials are redirected to Contractor's Altamont Landfill and Resource Recovery Facility, Contractor shall share with the City fifty percent (50%) of those savings, if any, on the total transportation and tipping price, inclusive of all of Contractor's handling and processing charges. The City shall not be required to adjust the Rates if Contractor's costs exceed the then existing Rates. If Contractor does not develop said processing capability at Altamont, or if the total charges at Altamont are not Cost Competitive, the City reserves the right to redirect Yard Waste collected under this Agreement to an alternative processing site, pursuant to the conditions set forth in this Section. In the event the City directs Contractor to use an alternative processing site, the City shall provide ninety (90) days' prior written notice to Contractor identifying said processing site and the date Contractor shall commence delivery of Yard Waste to such site. Contractor shall ensure that the alternative processing site receives Yard Waste collected under this Agreement by the date designated by the City. In the event that materials are redirected to an alternative processing site, and Contractor incurs lower transportation and tipping price, inclusive of all Contractor's handling and processing charges, Contractor shall share with the City 50% of said savings. Contractor has provided the City with its total per ton charges, inclusive of all Contractor's handling and processing charges, for transporting and tipping Yard Waste as of January 1, 2005. Said amount is \$56.89 which shall be adjusted annually pursuant to Sections 15.3 and 15.4.

ARTICLE 7.00 – COMPLIANCE WITH LAW AND PERMITS

7.1 Compliance with Law. Contractor shall comply, at its sole expense, fully and faithfully with all local, state and federal laws, ordinances, regulations and permit requirements, including City Legislation, as they may be amended from time to time, applicable to its performance under this Agreement, or in any way related to Contractor's performance of the services required under this Agreement; including, but not limited to, local, state and federal laws, ordinances and regulations relating to protection of the public's health, safety and welfare or contamination of the environment specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sections 9601 *et seq.*, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Sections 6901 *et seq.*, the California Integrated Waste Management Act of 1989, and all other applicable laws of the State of California, the County of Alameda, ordinances of the City, the requirements of Local Enforcement Agencies and other agencies with jurisdiction. Without limiting

the generality of the foregoing, Contractor shall, at its sole expense, prepare and complete, or arrange for the preparation and completion of, any environmental impact report or other environmental review required under applicable local, state and federal law for the construction, modification or operation of physical plants, if any, necessary to perform the services described in this Agreement.

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

7.3 Permits for Use of Facilities. Contractor shall keep in force and comply with the terms and conditions of all existing permits and approvals from governmental authorities necessary for the use of the Disposal Facility, Material Recovery Facility, Processing Facilities and Transfer Station (collectively "Facilities") throughout the Term to adequately dispose and process all Recyclables, Solid Waste and Yard Waste delivered to the Facilities pursuant to this Agreement. Contractor shall keep the City fully informed of its progress in securing renewals of all such permits which occur during the Term and which may affect the ability of Contractor to perform pursuant to this Agreement. Upon request, Contractor shall provide the City with copies of all relevant correspondence with permitting agencies and all other relevant material correspondence related to the permitting process with third parties, but not including internal memoranda or correspondence between Contractor and its agents, consultants or attorneys. Upon request, Contractor shall also provide the City with a status report on applications for renewals of existing permits or any new permits that 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 provided Contractor also complies with Section 6.1.2. A summary list of all current permits held by Contractor as of the Effective Date for operation of the Facilities, showing both the permit number and date of expiration, is attached to this Agreement as Exhibit N and incorporated by reference herein. A summary list of pending permits is attached to this Agreement as Exhibit N-1 and incorporated by reference herein. A summary list of all permits and pending permits as of July 1, 2005, including applicable permit numbers and date of expiration, is attached to this Agreement as Exhibit N-2 and incorporated by reference herein. Subsequent changes in the list of applicable permits and expiration dates shall be sequentially numbered and attached hereto. Contractor maintains that some of the foregoing information is confidential and proprietary and such Contractor designated information shall be subject to the disclosure restrictions of Sections 17.26.2, 17.26.3 and 17.26.4.

ARTICLE 8.00 – CUSTOMER SERVICE

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

- (a) preparation, coordination with the City, and distribution of announcements for the start-up of Single Family Dwelling curbside Solid Waste and Yard Waste collection services. Contractor shall obtain written approval from the City prior to production of public education materials as delineated in Exhibit G. The City will respond within ten (10) working days of receipt of production copy(ies) of public education materials from Contractor;
- (b) maintenance of a business office within the City limits with multi-lingual (at least English, Spanish, Chinese) capability and service hours from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding federal holidays. Contractor shall maintain a voicemail system (or its technological equivalent) for the Customer's use during non-regular service hours and respond to messages left on the system within one (1) working day of the message being left. Contractor must ensure that telephone calls to it from locations within the City are billed as "local calls" by all telephone companies;
- (c) appropriate notification of Customers and thirty (30) days notice to the City in advance of any scheduling change or material service change. Contractor will not permit any Customer to go more than seven (7) days without service in connection with a collection service schedule change;
- (d) collection of missed collections within twenty-four (24) hours of notification to the Contractor by Customers and/or the City, unless Contractor and Customer mutually agree upon a different timeframe, with Contractor always striving to achieve said collection to Customer's ultimate satisfaction;
- (e) maintenance of records of all commendations, complaints, and notifications of missed collections, and Contractor's response thereto. Contractor shall respond promptly to all Customer complaints and, when appropriate, document pertinent measures undertaken to resolve such complaints;
- (f) community education and outreach services in accordance with the community education and outreach plan prepared in accordance with Exhibit G and approved by the City under this Agreement; and
- (g) such additional services as may be specified in plans submitted under this Agreement or in changes in the scope of work under this Agreement and agreed to in advance by both Contractor and the City.

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

The provisions of this Section are complementary and supplemental to, and in no way limit, the provisions of Article 16.00. Failure of the City to evaluate Contractor as set forth in this Section shall not affect the rights and obligations of the City or Contractor pursuant to the remainder of the Agreement.

8.3 Billing, Payment, and Payment Collection Services.

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

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

8.3.1.2 Billing Errors. Identified billing errors must be corrected within two (2) business days and a revised bill must be sent to the Customer, upon their request, within three (3) business days thereafter. Contractor shall use the mailing address provided by the Customer. Contractor's records shall be matched with that of the Alameda County Assessor's records if, and only if, the following occurs: (i) an invoice becomes delinquent; or (ii) mail was returned.

8.3.1.3 Telephone Customer Service. Contractor will provide to its Customers call completion and on-hold rates of service at or above the accepted industry standard at any given time. The performance standard for Customer on-hold waiting time shall be three minutes or less based on a monthly average. In addition to Liquidated Damages set forth in Exhibit A-1, 3 (d), in the event that the performance standard is exceeded for two months in a row, Contractor will add the appropriate staff to restore compliance and meet the performance standard and take other action necessary to ensure compliance with this Section. Contractor will provide bilingual customer service representatives (English, Spanish, Chinese) or will provide a way for the Customer to adequately communicate with Contractor.

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

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

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

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

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

due on or before the 20th day of each succeeding month. For the period of January 1, 1996 through June 30, 1999, Contractor shall pay to the City a monthly franchise fee of \$305,000 (\$3,660,000 per annum). The payment for January 1996 will be due on or before the 20th day of February and each successive payment will be due on or before the 20th day of each succeeding month. Commencing July 1, 1999 the franchise fee required to be remitted pursuant to this section shall be increased by eighty percent (80%) of the change in the Index between the Annual Average (January-December) for 1998 and the Annual Average index for 1997. On July 1 of each subsequent year of the Term, the franchise fee, as adjusted as of July 1, 1999, shall be adjusted by eighty percent (80%) of the change in the Index between the Annual Average index in the year immediately preceding the year in which the fee is changed and the Annual Average index twelve (12) months earlier. The franchise fee payment for July 1999 shall be due on or before August 20, 1999 and each successive payment will be due on or before the 20th day of each succeeding month. If the franchise fee is not paid on or before the twentieth (20th) day of any month, Contractor shall pay to the City a late payment fee in an amount equal to one percent (1%) of the amount owing for that month. Contractor shall pay an additional one percent (1%) owing on any unpaid balance for each thirty (30) day period the franchise fee remains unpaid.

The City, at its sole discretion, may increase the franchise fee. Contractor shall collect and remit same to the City. In such event, the City shall be obligated to increase the Rates to generate a sufficient amount of revenue to cover the increased franchise fee owed to the City. The City shall by letter, similar in form to Exhibits PP-1 through PP-6 attached hereto, notify Contractor of the amount of the annual adjustment to the franchise fee. As of July 1, 2005 the monthly franchise fee amount due to the City is \$362,033. Each subsequent annual change in the franchise fee shall be sequentially numbered and attached hereto.

8.3.4 City Fees. From the Effective Date of this Agreement through December 31, 1995, Contractor shall pay City fees based upon the methodology for submitting City fees then in existence between the City and Contractor. For the period of January 1, 1996 through June 30, 1999, Contractor shall remit to the City a monthly payment of \$1,041,000 (\$12,492,000 per annum) for We Mean Clean, Household Hazardous Waste and recycling program activities. The payment for January 1996 will be due on or before the 20th day of February and each successive payment will be due on or before the 20th day of each succeeding month. Commencing July 1, 1999 the City fees required to be remitted pursuant to this Section shall be increased by eighty percent (80%) of the change in the Index between the Annual Average (January-December) index for 1998 and the Annual Average Index for 1997. On July 1 of each subsequent year of the Term, the City fees, as adjusted as of July 1, 1999, shall be adjusted by eighty percent (80%) of the change in the Index between the Annual Average index in the year immediately preceding the year in which the City fees are changed and the Annual Average index twelve (12) months earlier. The City fee payment for July 1999 shall be due on or before August 20, 1999 and each successive payment will be due on or before the 20th day of each succeeding month.

If the City fees are not paid on or before the twentieth (20th) day of any month, Contractor shall pay to the City a late payment fee in an amount equal to one percent

(1%) of the amount owing for that month. Contractor shall pay an additional one percent (1%) owing on any unpaid balance for each thirty (30) day period the City fee remains unpaid.

The City, at its sole discretion, may increase City fees. Contractor shall collect and remit same to the City. In such event, the City shall be obligated to increase the Rates to generate a sufficient amount of revenue to cover the increased City fees. The City shall increase said Rates by ordinance. In future years, the increased City fees shall be adjusted for changes in the Consumer Price Index in the manner set forth in Sections 15.3 and 15.4. If there is a conflict between how the Rates are adjusted for changes in the Consumer Price Index in the ordinance with Sections 15.3 and 15.4, the methodology set forth in Sections 15.3 and 15.4 shall prevail.

The City shall by letter, similar in form to Exhibits PP-1 through PP-6 attached hereto, notify Contractor of the amount of the annual adjustment to the City fees. As of July 1, 2005 the monthly City fees due is \$1,834,004. Each subsequent annual change in the City fees shall be sequentially numbered and attached hereto.

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

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

ARTICLE 9.00 – RECORD KEEPING, INSPECTIONS AND REPORTING

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

9.2 Record Keeping. In addition to other record keeping requirements, Contractor shall provide (i) collection and disposal records; (ii) character, weight and volume of Solid Waste, especially as related to reducing and diverting Solid Waste in

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

9.3 Inspection of Facilities and Operational Records. The City shall have the right, but not the obligation, to observe and inspect all of Contractor's Facilities and operations under this Agreement. In connection therewith, the City shall have the right to enter the Facilities upon reasonable notice to Contractor and during operating hours, speak to any of Contractor's employees and receive cooperation from such employees in response to inquiries. In addition, upon reasonable notice and without interference with Contractor's operations, the City may review and copy, at its expense, any of Contractor's operational records related to this Agreement. If the City so requests, Contractor shall make specified personnel available to accompany the City Representatives on inspections.

9.4 Reporting. Contractor shall submit monthly, quarterly and annual reports to the City documenting the disposition of Solid Waste and Yard Waste and shall format such reports so that they may be used by the City for City's compliance with the reporting requirements of AB 939 or any other subsequently enacted federal, state or local law governing integrated waste management. Contractor shall format such reports in accordance with the then current requirements of the California Integrated Waste Management Board or other agency(ies) subsequently authorized to administer federal, state or local law governing integrated waste management. Exhibit H to this Agreement sets forth a report format that conforms to the current requirements. The City may update the report format requirements from time to time and shall notify Contractor as provided for in Section 17.14 of this Agreement. Contractor shall be responsible for promptly updating this report format to insure the City's compliance with future requirements applicable to such reports. The City, in its reasonable discretion, may request additional information in, or modifications to the formatting of, such reports. Contractor shall provide the City with monthly reports showing both the average weekly and monthly telephone Customer on-hold waiting times and average abandonment rate along with its regularly submitted monthly reports. Nothing in this Section prohibits the City from independently conducting its own survey of customer telephone on-hold waiting time or taking other actions to monitor and enforce performance standards. All data generated for and contained in reports prepared under this Section shall be the property of the City.

ARTICLE 10.00 - INDEPENDENT CONTRACTOR

10.1 Contractor an Independent Contractor. It is expressly agreed that in the performance of the services under this Agreement, the Contractor shall be, and is, an independent contractor, and is not an agent or employee of the City. Contractor has and

shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's subordinates and employees. Contractor has completed the Independent Contractor Questionnaire attached hereto and incorporated herein as Exhibit VV.

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

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

ARTICLE 11.00 – PERFORMANCE BOND

11.1 Performance Bond or Alternative Security. On or before the Effective Date, Contractor shall provide the City with a fully prepaid Performance Bond substantially in the form of Exhibit J, in the amount of Twenty-five Million Dollars (\$25,000,000.00) payable to the City, executed as surety by a corporation authorized to issue surety bonds in the State of California, which corporation is acceptable to the City; and/or by providing as Alternative Security (i) a fully prepaid irrevocable letter of credit in form and substance satisfactory to the City and issued by a financial institution acceptable to the City; (ii) a certificate of deposit in the name of the City with a financial institution acceptable to the City; or (iii) an alternate instrument securing Contractor's performance which is acceptable to the City at its sole discretion; provided that in all events the Performance Bond or Alternative Security, alone or in combination, secure an amount at least equal to Contractor's cost to provide services for six (6) months. Such Performance Bond or Alternative Security shall be either (i) expressly provided for the full term of the Agreement, or (ii) provided for consecutive annual terms, in which case Contractor shall deliver to the City an annual Performance Bond or Alternative Security in a form acceptable to the City no less than sixty (60) days prior to the expiration of the preceding Performance Bond or Alternative Security. The City may require Contractor to increase the face amount of the Performance Bond or Alternative Security to maintain said Bond or Security in an amount at least equal to Contractor's cost (rounded to the closest Five Hundred Thousand Dollars - \$500,000) to provide services for six (6) months. A copy of the 2003 performance bond in the amount of Thirty-four Million, Dollars (\$34,000,000) is attached as Exhibit J-1. Subsequent performance bonds shall be sequentially numbered and attached hereto. Nothing in this subsection shall in any way obligate the City to accept a letter of credit, certificate of deposit or other form of Alternative Security in lieu of the Performance Bond.

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

11.3 Contractor's Obligation to Replenish Performance Bond or Alternative Security. Contractor covenants that it shall not dispute with its bonding company or the administrator of any Alternative Security the City's right to draw upon the Performance Bond or Alternative Security if Contractor's payments become more than thirty (30) days delinquent or if after reasonable notice, Contractor is assessed liquidated damages for acts or omissions set forth in Exhibit A-1 and Contractor has not cured the event of default after expiration of any applicable cure period. Within five (5) working days of receipt of notice from the City, Contractor shall renew or replace such sums as needed to replenish the Performance Bond, or, if applicable, the Alternative Security.

11.4 Termination of Performance Bond or Alternative Security Obligation. Under no circumstances shall Contractor change, or allow the expiration of, the Performance Bond or Alternative Security provided under this Agreement without written notice to the City and written authorization from the City to allow such change or expiration. If Contractor shall fully perform the covenants, promises, undertakings and obligations contracted by Contractor to be performed under this Agreement, then the City shall not draw against the Performance Bond or Alternative Security. Contractor's obligation to maintain the Performance Bond, or Alternative Security, shall terminate and be cancelled upon the completion of all of Contractor's obligations under this Agreement including, without limitation, Contractor's payment of all franchise, City fees, or regulatory fees, or other applicable payments under Section 8.3. In the event of Contractor's default, the Performance Bond or Alternative Security shall remain in effect until the City or its designated agent has completed all of Contractor's obligations under this Agreement. City shall execute and deliver to Contractor or Contractor's surety promptly upon the completion of all of Contractor's obligations under this Agreement, such certificates or other documents as either of them may reasonably request for the purpose of terminating and canceling the Performance Bond or Alternative Security. Absent such certificates or documents executed by the City, the Performance Bond or Alternative Security shall not be terminated or cancelled.

ARTICLE 12.00 - INSURANCE

12.1 Contractor's Agreement to Provide Insurance. On or before the Effective Date, Contractor shall procure and keep in force for the Term, or as otherwise specified below, the insurance coverages set forth below, with insurers with a Best rating of "A", or better, and class eight (8) or larger and under forms of policies satisfactory in

all respects to the City. Contractor shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this Article. A copy of the current Certificate of Insurance is attached hereto as Exhibit XX and incorporated herein. Subsequent copies of the Certificate of Insurance shall be sequentially numbered and attached hereto.

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

- (a) All coverages shall be primary insurance with regard to the work performed hereunder and each policy shall be endorsed to waive subrogation against the City and all other additional insureds.
- (b) Limits of liability: \$20,000,000 each occurrence, annual aggregate and \$20,000,000 annual aggregate for products-completed operations.
- (c) Contractor shall immediately notify the City when asserted Claims are greater than \$10,000,000. If requested by the City, Contractor shall immediately purchase additional umbrella coverage to restore coverage limits specified above.

12.3 Automobile Liability Insurance. Contractor, at its own expense, shall maintain automobile liability insurance for the period covered by this Agreement, including any extensions thereto, in the amount of Ten Million Dollars (\$10,000,000) per occurrence combined single limit coverage for personal and bodily injury and property damage. Such coverage shall include, but shall not be limited to, the use of owned, non-owned and hired vehicles and equipment used by Contractor in the performance of its activities contemplated under this Agreement.

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

12.5 Environmental Impairment Liability Insurance. Contractor, at its own expense, shall carry and maintain environmental impairment liability insurance for the Term, including any extensions thereto, in the amount of Ten Million Dollars (\$10,000,000) per loss and in annual aggregate, covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available, without involvement of the City, automatically broaden in its

form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants. The policy shall stipulate that this insurance is primary insurance and that no other insurance carried by the City will be called upon to contribute to a loss suffered by Contractor hereunder and waive subrogation against the City and other additional insureds.

12.6 Additional Insureds. The City, its officers, employees, appointed and elected officials, agents and volunteers (collectively "Insured Parties") shall be named as additional insureds for all liability arising out of: activities performed by or on behalf of 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 or protection afforded to the Insured Parties. Any failure to comply with reporting or other provisions of the policies including breaches of warranties by Contractor, shall not affect coverage provided to the Insured Parties.

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

12.8 City's Right to Cure. If Contractor fails to procure and maintain any insurance required by this Agreement, 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 Contractor. The City will provide Contractor with concurrent notice of its intent to purchase substitute insurance. Alternatively, the City may, at its option, terminate this Agreement effective on the date of such lapse of insurance if Contractor has not cured the event of default after expiration of any applicable cure period.

12.9 Annual Aggregate Limit. Should any of the required insurance to be provided according to Sections 12.2 through 12.5 change to or be provided under a form of coverage that includes a general annual aggregate limit, and provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence limits specified above.

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

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

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

ARTICLE 13.00 - INDEMNITY

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

Without limiting the generality of the foregoing, Contractor's indemnification shall include personal injury, death or damage to property (including contamination); product liability; violation of federal, state or local law; or any other Claim whatsoever connected with the activities of Contractor, its subcontractors, agents, and/or employees under this Agreement or on account of the performance or character of the work performed hereunder, including unforeseen difficulties, accidents, occurrences or omissions, including but not limited to, any failure to exclude Hazardous Waste from collection or processing; any Claim the Contractor, or its agents, subcontractors, directors, officers, employees or representatives, has breached an express or implied warranty or 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 Indemnities have provided Contractor a franchise which allegedly violates state or federal law under then current judicial precedent; and any Claim arising from City's performance under this Agreement.

13.2 City to Provide Notice of Claims. The City shall provide Contractor with prompt notice of any Claims received by it, and Contractor may assume the defense of any Claim, with counsel approved by the City, and Contractor shall have authority to settle any Claims provided such settlement fully releases and extinguishes Indemnitees'

alleged liability under the Claim. Where a conflict of interest exists between the Indemnitees and Contractor with respect to a Claim that is covered by Section 13.1, Contractor shall provide the Indemnitees with independent legal counsel of the Indemnitees' choice, at Contractor's expense.

13.3 Hazardous Waste Indemnification. Contractor shall indemnify, defend with Counsel approved by the City, protect and hold harmless the Indemnitees against all Claims, of any kind whatsoever paid, incurred or suffered by, or asserted against Indemnitees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance or Hazardous Wastes at any place where Contractor stores or disposes materials pursuant to this Agreement except to the extent that Contractor can demonstrate that such Claim arises solely from Hazardous Wastes collected and deposited by City employees (acting within the ordinary course and scope of their employment). The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify Indemnitees from liability. The City and Contractor desire to leave no doubts as to their respective roles, and that by entering into this Agreement, the City is not thereby becoming a "generator" or an "arranger" as those terms are used in CERCLA Section 107 (a) (3), and that it is Contractor, not the City, which is "arranging for" the collection from residents and others in the City, and the transport, processing and disposal of Solid Waste and Yard Waste which may contain hazardous substances. The City and Contractor agree that it is Contractor, and not the City, which will select the Transfer Station, Disposal Facility, Material Recovery Facility or Processing Facility destination of the nonrecyclable waste which Contractor will arrange to collect, that the City has not, and, by this Agreement does not, instruct Contractor on its collection methods, nor supervise the collection and disposal of waste, and nothing in this Agreement, or other action of the City shall be construed to place title to such waste in Contractor, the parties recognizing that whatever, if any, title Contractor may gain to such waste is by operation of law, and is not the result of this Agreement. The foregoing indemnity does not apply to Solid Waste or Yard Waste (or the Residue thereof) which is deposited in a disposal facility not owned by Contractor as a result of the City's exercise of its reserved right to direct such materials to another facility under Section 4.9 or under Section 6.1.2 if the City directs the waste to be delivered to a disposal facility not owned by Contractor or an affiliate and Contractor has given the City prior written notification of its objections to such facility based on environmental concerns, together with documentation of the cause(s) for such concerns.

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

ARTICLE 14.00 – CITY OBLIGATIONS

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

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

14.3 Defense of Franchise Rights. The City will make reasonable good faith efforts to prevent infringement by third parties of the rights granted to Contractor under this Agreement that Contractor brings to the attention of 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 14.3. The City will reasonably cooperate with Contractor in prosecuting and defending its exclusive franchise rights. Contractor shall reimburse the City, within thirty (30) days of receipt of a City invoice, for all actual, reasonable costs associated with defense of franchise rights (including but not limited to City staff and City Attorney time, including applicable City overhead allocations, and outside consultants, including attorney fees and costs). Notwithstanding anything to the contrary contained in this Agreement, Contractor shall defend with counsel approved by the Indemnitees, indemnify and hold harmless the Indemnitees against any and all Claims to challenge, annul, void, set-aside or invalidate the City's award of this Agreement or its performance thereunder.

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

14.5 City Representative. The City Administrator may designate one or more City employees for receipt, review and action upon all reports, plans and other documents to be submitted to the City by Contractor hereunder, and to otherwise act as a contact person for the Contractor regarding the requirements of this Agreement. In regard to matters that are within each designee's scope of authority, Contractor may rely on the directions of the City Administrator's designee as the directions of the City Administrator. In the event of any question as to the authority of such designee(s), Contractor shall apply to the City Administrator for final determination. A letter from the City Administrator designating the current City Representative(s) and the scope of their authority is attached as Exhibit QQ. Each subsequent change in the City Representative(s) or their scope of authority shall be sequentially numbered and attached hereto.

ARTICLE 15.00 – CONTRACTOR'S COMPENSATION, COLLECTION RATES

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

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

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

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

Year Three through Year Six The Rates in effect as of June 30, 1997 and as of June 30th of each succeeding year through June 2000 will be adjusted, effective as of the immediately following July 1 of each year, by multiplying each such Rate by one hundred percent plus the sum of (i) one and one-half percent (1-1/2%) and (ii) 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 Annual Average index twelve (12) months earlier. Any decreases in the Index shall be reflected as a negative adjustment. For example, the Rates in effect in June 1999 will be increased to reflect as a negative percentage change in the Index between the Annual Average index for 1997 and the Annual Average index for 1998, plus one and one-half percent (1-1/2%). The annual changes in Rates shall be those set forth on Exhibits B-3 through B-6.

Year Seven through the Term or extended Term The Rates in effect as of June 30, 2001 and in each succeeding year of the Term will be adjusted, effective as of the immediately following July 1 of each year, by multiplying each such Rate by one hundred percent plus eighty percent (80%) of the percentage change in the Consumer Price Index between the Annual Average (January-December) index in the year immediately preceding the year in which the Rates are being changed and the Annual Average index twelve (12) months earlier. The annual changes in Rates shall be those set forth commencing with Exhibit B-7 and each subsequent change in Rates shall be sequentially numbered and attached hereto.

15.4 Maximum CPI-Based Annual Increase or Decrease. Notwithstanding the foregoing, the maximum increase or decrease in Rates in any year after July 1996 under Section 15.3 will be five percent (5%), regardless of the amount by which the Consumer Price Index has increased or decreased during the twelve (12) month period described above. If the five percent (5%) ceiling is applied to limit increases or decreases in Rates in any year, the difference between five percent (5%) and the percentage by which Rates would have been increased or decreased in the absence of the ceiling will not be considered in any future year.

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

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

15.6 Balancing Account. Under the previous Franchise Agreement, the City established Contractor's Rates after considering the recommendations of the Alameda County Joint Refuse Rate Committee ("Committee"). The Committee's recommendations were based on its analysis of Contractor's costs for, and revenues from, providing Solid Waste services to ten (10) cities in Alameda County, including the City. Contractor had asserted that rates established by cities which are members of the Committee had produced revenues insufficient to cover its costs and provide the profit required by the existing Franchise Agreement, which resulted in a "balancing account" that reflected such claimed deficit. Specifically, Contractor asserted that as of December 31, 1994, there was an aggregate cumulative deficit in the balancing account of \$17,714,000, of which Contractor asserted that \$11,823,000 was attributable to the City. Contractor further asserted that the City's share of this deficit has continued to increase since December 31, 1994, and is projected to continue to increase through the remainder of calendar year 1995 at current rates and customer usage levels. While acknowledging these assertions, the City did not necessarily agree with them. Without conceding their respective positions, the parties agree that the Rates established by this Agreement, as

they are to be adjusted, are sufficient to resolve this dispute and that Contractor will make no Claim for an increase in Rates based on any asserted "balancing account" deficit, whether calculated as of a date before or after the Effective Date. Nor will Contractor attempt to recover the City's asserted share of the balancing account deficit from the other cities that are members of the Committee. Since the Rates are to be adjusted under this Agreement independent of costs and revenues, the "Balancing Account" concept is inapplicable.

15.7 Rates are Comprehensive Compensation. The Rates established by this Agreement, and as they are to be adjusted, shall be the full, entire and complete compensation due to Contractor for furnishing all labor, materials, equipment, supplies and other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. The Rates include, without limitation, all costs for the items mentioned in the preceding sentence and also for all taxes, City fees, franchise fees, insurance, bonds, overhead, profit, and all other costs necessary to perform all the services required by this Agreement in the manner and at the times prescribed.

15.8 Adjustments in Rates for Extraordinary Changes in Disposal Costs.

15.8.1 General. The Rates on Exhibit B-1 et al., include all costs of disposal, including all costs associated with construction, operation, closure and post-closure maintenance of Altamont for all Solid Waste and Yard Waste collected within the City's boundaries ("Disposal Costs"). Disposal Costs consist of two components: (a) a Base Costs Component; and (b) a Fees Component. The specific costs in each component and their amounts expressed in dollars per Ton as of July 1, 1995 are shown on Exhibit C. The specific costs in each component as of July 1, 2005 are shown on Exhibit C-1. Each subsequent annual change in the components shall be sequentially numbered and attached hereto. The annual adjustments in the Rates provided for in Section 15.3 are intended, and expected, to cover all increases in both components of Disposal Costs, as well as increases in costs of collection, processing, transfer and all other services to be provided under this Agreement, except as provided herein. The purpose of this Section 15.8 is to set forth the process by which Contractor may request, and the conditions under which it shall be entitled to receive, an increase in Rates in excess of that provided for in Section 15.3 based on extraordinary increases in Disposal Costs due to either an unforeseen increase in Base Costs due to future changes in law or to an increase in the Fees Component.

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

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

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

1. Costs to comply with all laws and governmental regulations existing as of the Effective Date, including but not limited to the following: the "Calderon Legislation" (former California Government Code, Sections 66796.53 and 66796.54, now California Public Resources Code Sections 45300-04, 45700; California Health & Safety Code Sections 40511, 41805.5, and 42311.5, and California Water Code Section 13273); "Proposition 65" (California Health & Safety Code, Section 25249.5 et seq., and Health & Safety Code Section 25192); the Federal Clean Air Act (42 U.S.C. Sections 7401-7642) and the California Clean Air Act (Health & Safety Code Sections 39000-44384); the Federal Clean Water Act (33 U.S.C. Section 1251 et seq.); the Porter-Cologne Water Quality Act (California Water Code, Division 7, Section 13000 et seq.); the California Integrated Waste Management Act of 1989 (California Public Resources Code, Divisions 30 and 31, Section 40000 et seq.); the Federal Resource Conservation and Recovery Act (42 U.S.C., Section 6901 et seq.); the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.); the California Hazardous Waste Control Act (California Health & Safety Code, Division 20, Chapter 6.5, Section 25100 et seq.); the Federal Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sections 11001-11050); the California Hazardous Materials Release Response Plan and Inventory Act (California Health & Safety Code, Division 20, Chapter 6.95, Section 25500 et seq.); the California Underground Storage Tank Act (California Health & Safety Code, Division 20, Chapter 6.7, Section 25280 et seq.); the California Occupational Safety and Health Act (California Labor Code, Division 5, Parts 1-10, Section 6300 et seq.); the Federal Occupational Safety and Health Act (29 U.S.C.C. Section 651 et seq.), and the regulations adopted thereunder, including but not limited to the Solid Waste Disposal Facility Criteria promulgated by the U.S. EPA (40 C.F.R., Parts 257 and 258); Bay Area Air Quality Management District Regulation 8, Rule 34; Title 14 California Code of Regulations, Title 22 California Code of Regulations; and "Subchapter 15" (Title 23 California Code of Regulations, Sections 2510-2601), as they exist on the Effective Date of this Agreement, including provisions,

if any, which become effective, or which require compliance by a date, after the date of this Agreement.

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

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

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

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

C. Costs Which May Result in an Increase in the Rates. The Rates may be increased to reflect the City's proportionate share, determined as provided in Section 15.8.2.D, of the net increase in the Base Costs Component attributable to the following, to the extent mandated by Changes in Laws (as defined below): (1) costs of making improvements or modifications at the Disposal Facility, (2) costs of performing closure/post-closure monitoring at the Disposal Facility, and/or (3) costs caused directly by, or directly necessary for operations at the Disposal Facility, including costs of site-specific record keeping and reporting, if such costs (in items (1), (2) and/or (3)) are necessary to comply with changes to the existing laws and governmental regulations described in Section 15.8.2.B.1, with new laws and governmental regulations enacted or promulgated after the Effective Date and not otherwise excluded by virtue of Section 15.8.2.B., or with new permits and changes to the terms and conditions contained in existing permits (except as provided in Section 15.8.2.B) applicable to the Disposal Facility (collectively referred to as "Changes in Laws").

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

D. Proportionate Share of Altamont Costs. To the extent that the net increase in costs of complying with Changes in Laws are attributable to Solid Waste already in place at Altamont at the time such Change in Law occurs, then City's proportionate share of the present value of such increases in costs shall be determined by multiplying such increase in costs by a fraction, the numerator of which is the amount of Solid Waste as of the time the increase is computed that is deposited at Altamont which was delivered from the City and the denominator of which is the total amount of Solid Waste then deposited at Altamont from all sources. Contractor represents that these amounts as of January 1, 1995 are approximately 6,441,000 (six million four hundred forty one thousand) tons and 19,595,000 (nineteen million five hundred ninety five thousand) tons, respectively. The costs of compliance with Changes in Laws described in

this paragraph shall be calculated on a "per Ton" basis, amortized over the useful life of the facilities constructed, and the annual amortization incorporated in Rates over the remaining Term of this Agreement. The annual increase in Rates attributable to the amortization of such costs shall be determined by dividing the City's aggregate proportionate share of such costs by (i) the remaining Term of this Agreement and (ii) the average number of Tons of Solid Waste collected from within the City's boundaries during the preceding year. The annual amortization described in the prior sentence shall be added to the Rates after said Rates are otherwise adjusted for said year by changes in the Index, adjustments to reflect changes in the Fees Components as described below, and adjustments to the Base Costs Components described in the following paragraph.

To the extent that the costs of complying with Changes in Law are attributable to Solid Waste not yet in place at Altamont at the time such Change in Law occurs, then the City's proportionate share of such costs shall be determined by multiplying the present value of such costs by a fraction, the numerator of which is the average number of Tons of Solid Waste from the City disposed of at Altamont during the preceding three years multiplied by the number of years remaining in the Term of this Agreement and the denominator of which is the total remaining permitted airspace available for disposal at Altamont as of the date of the change. As of the Effective Date of this Agreement, the remaining permitted air space is approximately 18.5 million Tons. The costs of compliance with Changes in Laws shall be calculated on a "per Ton" basis and amortized over the remaining life of the Disposal Facility and the annual amortization incorporated in Rates over the remaining Term of this Agreement by adding the City's proportionate share of such increase to the Rates. The annual amortization described in the prior sentence shall be added to the Rates after said Rates are otherwise adjusted for said year by the changes in the Index, and adjustments to reflect changes in the Fees Component as described in the preceding paragraph above. In all cases in which Contractor requests an increase in Rates above that provided for in Section 15.3 based on the costs of compliance with a Change in Laws, Contractor shall provide the City, on an annual basis, evidence showing (1) that the work required by the Change in Laws has been performed, (2) the amount of costs actually incurred, and (3) that the costs incurred were necessary to comply with the Change in Laws.

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

1. Contractor shall give the City prompt notice (in no case less than 90 days before their effective date, if possible) of the regulations, specifically identifying them and describing what changes in operations at the Disposal Facility are required, when compliance is required, and whether Contractor or the Disposal Facility is eligible for any exemptions or variances.

2. Contractor shall thereafter submit to the City, for review and comment, its proposed method for complying with the regulations, the estimated cost

of compliance, the City's proportionate share thereof, and the associated increase necessary in the Rates. The City will act promptly on the submission.

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

15.8.3 Disposal Facility Regulatory Fees and Taxes. If there is an increase or decrease in the existing taxes and fees shown on C, or subsequent exhibits, for the Disposal Facility, the change in cost will be passed through to the Customers as provided below. Similarly, if there is a new tax or fee imposed on disposition of wastes at the Disposal Facility (not including, for example, income or franchise taxes or the like, on non-regulatory fees), the amount of the new disposition cost will be passed through to the Customers as provided below and thereafter treated as the existing taxes and fees shown on Exhibit C, et al.

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

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

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

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

No fees or charges to which Contractor agrees contractually or negotiates shall be passed through to Customers unless agreed to in writing by the City. The City acknowledges that Contractor may be able to negotiate a reduction in fees and taxes in exchange for agreeing to a Host Fee, the net result of which would be an overall reduction in the Fees Component and, in such event, the City would expect to agree to the substitution of the Host Fee but makes no present commitment to do so.

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

15.9 Closure/Post-Closure Maintenance; Escrow Account for Provisional Payments. Contractor first included a specific amount for Closure/Post-Closure Maintenance (CPC) in its rate application submitted to the Committee in 1991. The Committee evaluated this request from a legal, engineering and economic perspective and conducted negotiations with Contractor looking toward a comprehensive set of agreements between Contractor and all member agencies on this issue. Some of the member agencies, including the City, entered in to an Agreement for Provisional Charges for the Closure and Post-Closure Maintenance of Altamont Sanitary Landfill dated as of April 6, 1993, ("Provisional CPC Agreement"). Under the Provisional CPC Agreement, the City agreed to increase the Rates to include, on a non-precedential and provisional basis, charges for a proportionate share of CPC costs which Contractor had included in its 1993 Rate application. This Provisional CPC Agreement was formally extended in November 1993 and the provisional CPC component of \$1.66 Ton has continued to be incorporated in Rates that the City has authorized Contractor to collect.

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

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

Contractor and Committee are continuing negotiations toward a comprehensive set of agreements resolving the CPC issue, determining the proportionate share of the total amount of CPC costs which should be attributable to Committee member agencies collectively, and allocating that share among each of the member agencies. No formal agreements have been signed.

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

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

Finally, Contractor agrees that (1) to the best of its knowledge no Solid Waste collected within the City has been disposed of at the Tri-Cities Refuse and Recycling

Facility on Auto Mall Parkway in Fremont (formerly known as the Durham Road landfill), which is also owned by Contractor and (2) neither the City nor Customers within the City have any responsibility for contributing toward the cost of closure and post-closure maintenance of the Tri-Cities Refuse and Recycling Facility.

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

If one party believes such an event has occurred and warrants an increase or decrease in the Rates different from that provided for in Section 15.3, it shall notify the other, providing a full explanation and a proposed change in Rates.

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

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

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

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

15.14 Service Discounts. Low income senior citizen customers, sixty (60) years of age or older, living in owner/occupied Single Family Dwellings who can demonstrate that they receive assistance under PG&E's California Alternate Rates for Energy Program (CARE), as it currently exists and is administered, shall receive a twelve and

one-half percent (12.5%) discount on their monthly rate for service commencing on July 1, 1996. Owners of Multifamily Dwellings shall receive an eight percent (8%) discount on their monthly rate for service to allow for vacancies commencing on July 1, 1996.

On July 25, 1995 the City approved the Rates that included an amount to be charged for apartment complexes with five or more units. The Rates were to become effective on September 1, 1995. In establishing the Rates, it was the intention of Contractor to create an incentive for apartment house owners to subscribe to a more efficient Solid Waste collection and disposal service by increasing the amount to be charged for more than once per week pickup. Due to space limitations, some apartment house owners are unable to subscribe to a more efficient Solid Waste collection and disposal service. Contractor has requested, and the City agrees, to allow Contractor to charge these Customers a lower Rate if Contractor reasonably determines that the Customer is willing but unable, due to space limitations, to subscribe to a more efficient collection service. The Rate to be charged as of July 1, 1996 is that Rate which would be in effect if the Customer was able to subscribe to a more efficient collection and disposal service.

Contractor shall be expressly prohibited from offering additional discounts from adopted Rates charged to Customers without prior written authorization from the City that shall not be unreasonably withheld.

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

ARTICLE 16.00 – DEFAULTS AND REMEDIES

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

(a) Contractor fails to perform its obligations under this Agreement or future modifications of this Agreement and (i) the failure or refusal of Contractor to perform as required by Sections 4.2 through 4.4, Articles 11 through 13, Section 18.1.2, Section 18.1.4, or Section 18.2 of this Agreement is not cured within two (2) business days after receiving notice from the City specifying the breach; or (ii) in the case of any other breach of this Agreement, the breach continues for more than fifteen (15) calendar days after written notice from the City for the correction thereof, provided that where Contractor demonstrates to the City's reasonable satisfaction that such breach cannot be cured within such fifteen (15) day period, Contractor shall not be in default of this Agreement if Contractor shall have commenced action required to cure the particular breach promptly in light of the circumstances, but in any event within fifteen (15) days after such notice and it continues such action diligently until completed;

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

(c) There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limitation its vehicles, maintenance or office facilities, or Processing Facilities or any part thereof, of such proportion as to substantially impair Contractor's ability to perform under this Agreement, and which cannot be released, bonded or otherwise lifted within forty-eight (48) hours excluding weekend and holidays;

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

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

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

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

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

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

16.2 Remedies.

16.2.1 Termination. Upon an event of Default as defined in Section 16.1, the City shall have the right to terminate this Agreement upon a notice of not less

than five (5) days, provided such termination shall be authorized by the City Council or a designee authorized by the City Council, but without the need for any hearing, suit or legal action.

16.2.2 Possession of Property Upon Default. In the event of Contractor's default, the City shall have the right to take possession of any and all of Contractor's land, equipment, facilities and other property reasonably necessary for the provision of services hereunder and the billing and collection of fees for those services. The City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of services, which may include the award of an agreement to another service provider. If the City retains possession thereof after the period of time for which Contractor has already been paid by means of bills issued in advance of providing service for the class of service involved, Contractor shall be entitled to the reasonable rental value of such property, which shall be offset against the damages due the City for Contractor's default. Contractor agrees that it will fully cooperate with the City to effect the transfer of possession of property for the City's use. If the City so requests, Contractor shall keep in good repair all such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain property in operational condition. The City may immediately engage all or any personnel necessary for the provision of services, including if the City so desires employees previously employed by Contractor. Contractor further agrees, if the City so requests, to assist the City in securing the services of any or all management or office personnel employed by Contractor whose skills are 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 16.2.2. Contractor agrees that the City's exercise of its rights under this section: (i) does not constitute a taking of private property for which compensation must be paid; (ii) will not create any liability on the part of the City to Contractor other than the payment of reasonable rental value as provided for in this subsection; (iii) does not exempt Contractor from the indemnity provisions of Article 13.00 which are meant to extend to circumstances arising under this Section. The City has no obligation to maintain possession of Contractor's property for continued use for any period of time and may at any time at its sole discretion relinquish possession to Contractor.

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

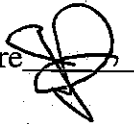
16.2.4 Liquidated Damages.

16.2.4.1 General. The City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, is not impossible, to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticality of ascertaining damages include, but are not limited to, the

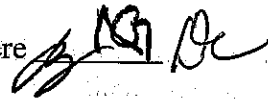
fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit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

16.2.4.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties further acknowledge that consistent, reliable Solid Waste, Recycling, and Yard Waste collection, processing and disposal services are of utmost importance to the City and that the City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages 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 16.00, the parties agree that the liquidated damage amounts set forth in Exhibit A-1 represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. The parties further agree that during the start up of services contemplated by this Agreement, situations may occur which are best dealt with in a manner different than herein provided. Between the Effective Date and April 30, 1996, the City and Contractor agree to meet and resolve problems associated with the implementation of services. In consideration of Contractor's agreement to this provision, the City agrees to not assess liquidated damages during this implementation period. If in the future there shall be a similar implementation period required to commence a new level or type of service, the City and Contractor agree to discuss the suspension of liquidated damages for a specified period of time. The City and Contractor agree that between January 1, 2005, the effective date of the Fifth Amendment to Franchise Agreement, and sixty (60) days following completion of single stream cart delivery and a food scraps container 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 for Yard Waste and recycling services. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Contractor Initial Here



City Initial Here



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

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

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

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

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

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

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

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

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

16.3 Excuse from Performance.

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

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

16.3.3 Notice. The party claiming excuse shall deliver to the other party a written notice of intent to claim excuse from performance under this Agreement by reason of an event of Force Majeure. Notice required by this Section shall be given promptly in light of the circumstances but in any event not later than five (5) calendar days after the occurrence of the event of Force Majeure. Such notice shall describe in detail the event of Force Majeure claimed, the services impacted by the claimed event of Force Majeure, the expected length of time that the party expects to be prevented from performing, the steps which the party intends to take to restore its ability to perform; and such other information as the other party reasonably requests.

16.3.4 City's Right in the Event of Force Majeure. The partial or complete interruption or discontinuance of Contractor's service caused by an event of Force Majeure shall not constitute an event of default under this Agreement. Notwithstanding the foregoing: (i) the City shall have the right to assume possession of Contractor's facilities and equipment in accordance with Section 16.2.2 of this Agreement in the event of non-performance excused by Force Majeure; (ii) if Contractor's excuse from performance for reason of Force Majeure continues for a period of thirty (30) days or more, the City shall have the right in its sole discretion to immediately terminate this Agreement provided that a third party is ready, willing and able to commence performance, in which case the City still shall have the right to assume possession of Contractor's property in accordance with Section 16.2.2; (iii) if Contractor is unable to collect and dispose of Solid Waste and Yard Waste as required by this Agreement for a period of three (3) days, as a result of a strike or other labor unrest which is within the definition of Force Majeure, the City shall have the right to assume possession of Contractor's property in accordance with Section 16.2.2; and (iv) if Contractor's inability to collect and dispose of Solid Waste and/or Yard Waste for the reason identified in (iii) above continues for fourteen (14) days from the date by which Contractor gave or should have given notice under Section 16.3.3, the City may terminate this Agreement.

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

16.5 Dispute Resolution. The City and Contractor agree that the only issues to be mediated pursuant to this Section shall be (i) a determination of adjustment to Rates due Contractor for changes in the scope of work to be performed under this Agreement in accordance with Section 4.7; and (ii) failure of the City to adequately adjust the Rates pursuant to Article 15.00 of this Agreement.

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

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

ARTICLE 17.00 - MISCELLANEOUS

17.1 Subcontracting. Contractor shall not engage any subcontractors to perform any of the services required of it under this Agreement without the prior written approval of the City. Contractor shall notify the City no later than ninety (90) days prior to the date on which it proposes to enter into a subcontract, providing the City with all information it requests with respect to the proposed subcontractor. City may approve or reject any proposed subcontract and/or subcontractor in its sole discretion if the proposed subcontract replaces essential services to be performed by Contractor pursuant to Sections 4.2 through 4.4 of this Agreement. City's consent to a subcontract and/or subcontractor shall not be unreasonably withheld as to other aspects of this Agreement that are not deemed to involve essential services to the City.

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.

17.2 Nondiscrimination.

17.2.1 Equal Employment Practices. Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. Contractor has provided a Statement on its Affirmative Action Program a copy of which is attached hereto as Exhibit WW and incorporated herein. 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 Exhibit X ("Declaration of Compliance with the Americans with Disabilities Act") attached hereto and incorporated herein.

17.2.2 Treatment of Customers. In performing this Agreement, Contractor shall not discriminate against Customers or potential Customers 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.

17.3 First Source Employment Referral Service. The City and Contractor have agreed to delete this section in its entirety.

17.4 Compliance with the City's MBE/WBE Program. The City and Contractor have agreed to delete this section in its entirety.

17.5 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 Exhibit P. Additionally, opportunities for training and employment shall be given to residents of Oakland. To assist the City's in its need to obtain information about Contractor, Contractor agrees to complete the Professional Services Questionnaire attached and incorporated herein as Exhibit RR; the Project Consultant Team attached and incorporated as Exhibit SS; and the Employment Questionnaire attached and incorporated as Exhibit TT.

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

LBE/MBE/WBE businesses. Quarterly reports shall be due to the City by the 20th day of February, May, August and November of each year.

17.7 Employment Program. The City and Contractor have agreed to delete this section in its entirety.

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 Exhibit AA.

17.10 Business Tax Certificate. Contractor shall obtain and provide proof of a valid City business tax certificate. Said business tax certificate will be valid prior to and to the conclusion of this Agreement. A copy of the Business Tax Certificate for 2004 is attached hereto and incorporated herein as Exhibit UU. A copy of subsequent Business Tax Certificates shall be sequentially numbered and attached hereto.

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

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.

17.12 Conflict of Interest. The City and Contractor have agreed to delete this section in its entirety.

17.13 Attorney's Fees. In any dispute between the parties, whether or not resulting in litigation or any appeal therefrom, the prevailing party shall be entitled to recover from the other party all reasonable costs, including, without limitation, reasonable attorneys' fees. "Prevailing parties" shall include without limitation (i) a party who dismisses an action in exchange for sums allegedly due such party; (ii) the party which received performance from the other party of an alleged breach of a covenant or a desired remedy where such performance is substantially equal to the relief sought in an action; or (iii) the party determined to be the prevailing party by a court of law.

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

Director of Public Works
Public Works Agency
City of Oakland
250 Frank Ogawa Plaza, Suite 4314
Oakland, California 94612
Telephone: (510) 238-3961
Facsimile: (510) 238-2233

Director of Finance and Management
Finance and Management Agency
City of Oakland
150 Frank Ogawa Plaza, Suite 5215
Oakland, California 94612
Telephone: (510) 238-2220
Facsimile: (510) 238-2059

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

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

If to Contractor, address to:
Vice-President
Waste Management of Alameda County, Inc.
172 98th Avenue
Oakland, California 94603-1004
Telephone: (510) 613-2814
Facsimile: (510) 613-2839

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

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

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

17.16.1 Events Considered to be Assignments. For purposes of this Section when used in reference to Contractor, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result in a change of control of Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

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

The City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

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

(a) Contractor shall undertake to pay the City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;

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

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

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

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

17.18 Interpretations. Each party, and counsel for each party, has reviewed and been provided the opportunity to revise this Agreement. Accordingly, the normal rule of construction to the effect of any ambiguities being resolved against the drafting

party shall not be employed in the interpretation of this Agreement or any amendment thereto.

17.19 References to Laws. All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies that succeed to or assume the functions they are currently performing.

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

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

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

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

17.23 Guaranty of Contractor's Performance. Pursuant to a guaranty in substantially the form attached as Exhibit K-1, superceding prior Exhibit K, WASTE MANAGEMENT HOLDINGS, INC., formerly known as WMX Technologies, Inc., a Delaware Corporation, which owns all of the issued and outstanding common stock of USA Waste of California, a Delaware corporation which owns all of the issued and outstanding common stock of Contractor, has agreed to guaranty Contractor's performance of this Agreement. The Guaranty is being provided concurrently with Contractor's execution of this Agreement.

17.24 Effect on Existing Agreements.

17.24.1 1978 Franchise Agreement. The 1978 Franchise Agreement, as amended, will remain in full force and effect until the first day of the Term of this Agreement, as of which date it will (assuming this Agreement becomes effective) automatically terminate. Upon the commencement of this Agreement, the parties will cooperate with each other to ensure a smooth transition between the 1978 Franchise Agreement and this Agreement. Contractor shall keep all insurance policies required by

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

17.24.2 Solid Waste Route Collection Information. Contractor shall provide the City with new route maps and route sheets at least thirty (30) days prior to the implementation of curbside Solid Waste collection. Subsequently, Contractor shall present new route maps and route sheets to the City at least thirty (30) days prior to route changes to allow timely City-wide changes in recycling routes. Minor route adjustments may be made with less than thirty (30) days notice if mutually agreed upon by the City and Contractor. Contractor shall make a reasonable effort to minimize changes in the pickup day for residential Customers and to minimize the disruption to existing service and to the City's Recycling Agreements.

Contractor agrees to work with the City and the holder(s) of the City's other Recycling Agreement(s) or their successors/assigns to minimize disruption to service and minimize the cost impact of changing garbage routes, frequency, times and days of collection (collectively called "Changes").

Notwithstanding such good faith efforts, the holders of the Recycling Agreements may nevertheless incur additional costs as a result of such Changes and may file a Claim against the City to recover such additional costs. Contractor agrees to defend with counsel reasonably acceptable to the City, indemnify and hold harmless the indemnitees against any and all Claims relating to or arising out of such Changes. Contractor shall be solely liable for any and all such Claims made by other Recyclers.

Although the Recycling Agreements do not contain an explicit provision allowing for cost recovery in the event of Changes, Contractor acknowledges that a court of competent jurisdiction may nevertheless hold that the Recycling Contractors may have valid Claims for Changes against the City.

If a Claim is filed by one of the City's other Recyclers related to or arising out of such Changes, the City shall promptly forward a copy of such Claim to Contractor. The City and Contractor will work cooperatively and in good faith to promptly resolve the Claim.

Contractor shall reimburse the City, within thirty (30) days of receipt of a City invoice, for all actual, reasonable costs associated with reviewing, investigating, processing, defending, negotiating, settling, and litigating (in judicial, administrative or other forums) said Claim (including but not limited to City staff and City Attorney time, including applicable City overhead allocations, and outside consultants, including attorneys' fees and costs).

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

17.26 Access to and Disclosure of Records.

17.26.1 Access to Records. Contractor shall permit access to its records as set forth in Sections 7.3, 8.3 and its records of employment, employment advertisements, application forms, and other pertinent data or records relating to Contractor's employment obligation under Section 17.2 and as otherwise required by this Agreement, by the California Fair Employment Practices Commission, the City or any appropriate employee, department, or agent designated by the California Fair Employment Practices Commission or by the City respectively, for the purpose of investigating Contractor's compliance with the California Fair Employment Practices Act or Sections 17.2 of this Agreement. Should Contractor be required to provide reports to the City concerning its obligations under this Section, said reports may be in summary form (with private or identifying information about specific employees omitted) which set forth the relevant information in a statistical way.

17.26.2 Confidential Information. Contractor maintains that the information provided pursuant to Sections 7.3 (as designated by Contractor), 8.3, and 17.2 is confidential and proprietary information ("Confidential Information"). The City will not disclose the Confidential Information (or any version or permutation thereof) to any third party, including without limitation Contractor's competitors and Customers. City further agrees that it will not use the Confidential Information for any purpose other than that stated above, or in Section 8.3, and the City and its representatives (which includes employees, officials, consultants and contractors) will not disclose the Confidential Information to any Person, except that the Confidential Information may be disclosed to those representatives for evaluating performance herein. All representatives of the City and other Persons to whom Confidential Information is disclosed will be informed of the confidential nature of the Confidential Information and shall agree to be bound by this Agreement.

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

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

17.27 Parties in Interest. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any persons other than the parties to it and their representatives, successors and permitted assigns.

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

If the City believes that Contractor has established lower residential curbside rates under a comparable contract, it may notify Contractor and demand a meeting. Contractor shall attend such meeting and shall provide any relevant information requested by the City pertaining to the other contract and the rates charged thereunder. The information furnished shall be subject to the confidentiality provisions of Section 17.26, through mediation and arbitration.

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

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

lower the rates under this Section, the rates shall be adjusted as otherwise provided in this Agreement.

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

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

17.29 Wages.

17.29.1 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 Exhibit Y 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 17.29.1, 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.

17.29.1.1 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.

17.29.1.2 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.

17.29.1.3 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.

17.29.1.4 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.

17.29.1.5 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.

17.29.1.6 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.

17.29.1.7 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.

17.30 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 subcontractor 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.

17.31 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.

17.32 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 2.23.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use 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 Exhibit Z, the Equal Benefits-Declaration of Nondiscrimination, incorporated herein.

17.33 Nuclear Free Zone Disclosure. Contractor represents, pursuant to Exhibit BB ("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 Exhibit BB, attached hereto.

ARTICLE 18.00 – RESIDENTIAL RECYCLING PROGRAM SERVICES

18.1 Residential Recycling Program Services Provided by Contractor. Contractor shall operate a Program to collect, process, and market all Targeted Recyclable Materials placed for collection by participating Single Family Dwellings, Multifamily Dwellings, and City Facilities listed in Exhibit T in Contractor's Service Area. Contractor shall provide all labor, materials, equipment, supplies, supervision and other items necessary for the performance of the services under this Agreement. The enumeration of, and specifications of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated or not. The work to be performed by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents, City Facilities, and subscribing Small Businesses within the Service Area are provided reliable, courteous and high-quality service at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided for in this Article, whether such other aspects are enumerated elsewhere in this Agreement or not.

Contractor 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.

Contractor shall begin used motor oil filter collection forty-five (45) days after execution of the Fourth Amendment to Franchise Agreement.

18.1.1 Contractor's Service Area. Contractor's Service Area shall be Sectors C and D as shown in Exhibit T. Contractor shall be required to provide the Program's services to newly constructed or occupied dwellings. The street and/or physical boundaries of this Service Area are as follows:

Sector C. The boundaries of Sector C are as follows: The Northern boundary is the Lake Merritt Channel, Lakeshore Avenue, East 18th Street, Park Boulevard, Interstate 580, Fruitvale Avenue, MacArthur Boulevard, Lincoln Avenue, and Joaquin Miller Road; the Southern boundary is High Street, Interstate 580, Keller Avenue; the East and West borders are the Oakland City limits.

Sector D. The boundaries of Sector D are as follows: The Northern boundary is High Street, Interstate 580, and Keller Avenue; the South, East and West borders are the Oakland City limits.

18.1.2 Collection Requirements.

18.1.2.1 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 City Representative. Contractor shall provide, at a minimum, weekly collection to participating Multifamily Dwellings.

18.1.2.2 Material Preparation Requirements.

(a) Single Family Dwellings, Multifamily Dwellings and City Facilities 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 (1) placed in the recycling container provided by Contractor or (2) stacked or bundled next to the recycling container. 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. Up to five gallons of used motor oil may be set out for collection. Contractor may decline collection of oil in incorrect containers or the amount exceeding five gallons. 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.

In the event that federal and/or state laws and regulations are modified with respect to provisions for exemptions, exclusions, and liabilities with regard to the collection of used motor oil, Contractor agrees to comply in all respects with said modified laws and regulations which shall take precedence over this Agreement for collection of the same; and to the extent said changes in the federal and/or state laws and regulations impact the terms of this Agreement, Contractor and the City reserve the right to modify or terminate that portion of the service providing for the residential collection of used motor oil.

18.1.2.3 Handling and Delivery. Contractor shall collect all Targeted Recyclable Materials in, overflowing, or adjacent to recycling containers or recycling bags and when material has been scattered within five feet of the container or recycling bag due to scavenging or adverse weather conditions. Contractor is authorized to decline collection of Targeted Recyclable Materials containing excess Contaminants and Hazardous Waste, or not prepared in accordance with Program requirements. If Contractor declines collection, then Contractor shall affix a note to, or place a note within, the recycling container explaining why the materials were refused. The "note" must be acceptable to the City. Collection from Multifamily Dwellings shall be performed at designated areas within the property confines with prior consent of the building owner/management, and in compliance with all applicable City codes and ordinances.

18.1.2.4 Backyard Service. Contractor shall provide backyard Recycling collection service for (i) frail senior citizens and disabled individuals at no additional charge, in accordance with the requirements set forth in Exhibit S; (ii) 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 Contractor attached hereto as Exhibit DD; and (iii) other Customers paying an additional charge for backyard service. Contractor shall be responsible for determining who receives backyard service, subject to guidelines approved by the City.

18.1.3 Ownership of Targeted Recyclable Materials. Ownership and the right to possession of Targeted Recyclable Materials placed in containers or recycling bags or bundles for collection, or placed at curbside or the designated recycling collection point, excluding Hazardous Waste, shall transfer directly from the Customer to Contractor by operation of law, consistent with Section 5.1.3 of this Agreement. Contractor's arrangements with 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 and all other substances, excluding Hazardous Waste, whether or not recyclable, which is set out for collection, shall pass to Contractor at the time it is set out, consistent with Section 5.1.3 of this Agreement.

The City shall make a reasonable effort to minimize scavenging by enforcing the State of California Public Resources Code Sections 41950 and 41951, which makes it unlawful to remove recyclable materials which have been set out for collection by 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, and forever discharge the City, its elected and appointed officials, officers, agents, employees, and members of commissions (collectively called "City"), from any and all claims, actions, causes 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 acknowledge 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 waive the provisions of Section 1542 of the Civil Code of California that 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 with this understanding, nevertheless, elect to and do assume all risks for rights, claims, demands, obligations, causes of actions or liabilities, known or unknown, heretofore and hereafter arising with the subject matter of this Agreement.

Contractor Initial Here



City Initial Here



18.1.4 City Facility Collection and Service Requirements. Contractor shall provide, at a minimum, weekly collection at the City Facilities, listed in Exhibit U, 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. There shall be no charge to the City for this service.

18.1.5 Special Events Recycling. Contractor shall offer to provide 96-gallon carts for one-time collection of Source Separated Targeted Recyclables (except used motor oil and used motor oil filters) from one-day, two-day or three-day special events throughout the City. Contractor will deliver recycling carts the day before the event and pick up carts the day following the event. If the event is on a weekend or collection holiday, Contractor will deliver carts the last business day before the event and pick up carts the first business day following the event.

Special Events Recycling Customers will be required to place commingled containers (glass, metal, aseptic, and Plastic Containers) in a separate cart from newspaper and mixed paper (which shall be combined in one cart). Corrugated cardboard is required to be flattened and no larger than 3 feet by 3 feet. The rate for Special Events Recycling shall be \$21.00 per 96-gallon cart as of July 1, 2005. The rate shall be adjusted upward or downward on July 1 of each year pursuant to the provisions of Section 15.3.

18.2 Small Business Collection and Service Requirements. Contractor shall operate a Small Business Recycling Program to collect, process, and market Targeted Recyclable Materials from participating Small Business Customers in Contractor's Service Area. Contractor shall begin Small Business collection forty-five (45) days after execution of the Fourth Amendment to Franchise Agreement.

18.2.1 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 recycling collection day for Small Businesses. Contractor will cooperate with the City to provide Small Business collection schedule, on an as-needed basis, for outreach activities.

18.2.2 Small Business Recycling Containers and Replacement. For the purpose of providing services 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 Multifamily Dwellings. In such case, the Small Business must use Contractor-owned containers. 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.

18.2.3 Small Business Material Preparation Requirements.

(a) Small Businesses will be required to place commingled Targeted Recyclable Materials in a recycling container(s) provided by Contractor.

(b) Corrugated cardboard is required to be flattened and no larger than 3' by 3' and be (1) placed in the recycling container provided by Contractor or (2) stacked or bundled next to the recycling container.

(c) There shall be no minimum level of recyclables before a Small Business may participate in the Program.

(d) 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 defined in Article 1.00, 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.

(e) Contractor may decline collection of Targeted Recyclable Materials containing excess Contaminants and Hazardous Waste, or not prepared in accordance with the Program requirements. If Contractor declines collection, Contractor shall affix a note to or place a note within the recycling container explaining why the materials were refused. The note must be acceptable to the City.

(f) Contractor shall collect all Targeted Recyclable Materials in or adjacent to recycling containers when material has been scattered within five feet of said containers due to scavenging or adverse weather conditions.

(g) In the event of chronic incorrect setouts, Contractor may, after consultation with the City, end service to a Small Business with prior notice. If the Small Business pre-paid for Program services, Contractor must issue a pro-rated refund for the remaining amount of service.

18.2.4 Small Business Recycling Rates. The Rates in this Section shall be published by Contractor, 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 recycling-related charges 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. The City may, at its option, subsidize the Small Business rate.

The Small Business, property owner, or their agent, shall pay all costs of the plastic bag service (including but not limited to bag purchase, delivery and collection). All costs shall be included in the bag subscription rate for Small Businesses. Small Businesses using bag subscription shall pay the rate(s) set forth in Exhibit CC; 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 shall 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 Exhibit CC; 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 18.2.3.

18.2.5 Right to Recycle. Targeted Recyclable Materials set out by Small Businesses for collection by Contractor are to be collected and recycled by Contractor. Nothing in the Fourth Amendment to Franchise 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 Recyclables, provided the setout method is distinct. Nothing in the Fourth Amendment to Franchise Agreement shall limit the right of any person to donate, sell, transport, pay for the removal of, or otherwise dispose of their own Source Separated Recyclables, provided that such activity is in accordance with the provisions of the Oakland Municipal Code.

Contractor may decline to initiate service to a business that is not an eligible Small Business, but must communicate its non-eligibility determination to the business in writing using a "Notice of Non-Eligibility" provided by the City.

18.3 Recycling Containers. Contractor shall be solely responsible for purchase and distribution of recycling containers. Style, color, size, manufacturer, and copy to be printed or embossed on the containers shall be subject to approval by the City. The City will not unreasonably withhold approval.

18.3.1 Single Family Dwelling Recycling Containers. Contractor shall be solely responsible for purchase and distribution of a 64-gallon recycling container for all Single Family Dwellings. 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 top cap, and be clearly marked as used motor oil containers. The collection, handling and transportation of used motor oil containers shall be in compliance with all applicable laws and regulations.

Containers for the collection of used motor oil filters shall be a leak-proof oil filter container such as a 6 mil, reusable, plastic bag imprinted or labeled with instructions, Oakland Recycles logo and referral phone number, in English and Spanish. Container and imprint or label design is subject to City approval. The collection, handling and transportation of used motor oil filters 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.

18.3.2 Multifamily Dwelling 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.

Multifamily 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 multifamily recycling containers to be used for the

storage and collection of Targeted Recyclable Materials shall be subject to approval by the City. Multifamily 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 multifamily recycling containers.

Upon Agreement end or Agreement termination, Contractor shall remove all recycling containers from Multifamily Dwellings within four weeks unless other arrangements are made with the individual Multifamily Dwellings or with 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 top cap, and be clearly marked as used motor oil containers. The collection, handling, and transportation of used motor oil containers shall be in compliance with all applicable laws and regulations.

Containers for the collection of used motor oil filters shall be a leak-proof oil filter collection container such as a 6 mil, reusable, plastic bag imprinted or labeled with instructions, Oakland Recycles logo and referral phone number, in English and Spanish. Container and imprint or label design is subject to City approval. The collection, handling and transportation of used motor oil filters shall be in compliance with all applicable laws and regulations.

The number and size of community recycling containers to be provided to the Multifamily Dwellings shall have adequate capacity to service all eligible units. If the City or Customer 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.

18.3.3 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 the City. Contractor shall be solely responsible for the purchase and distribution of replacement containers. During 2005 and 2006, Contractor shall be responsible for providing annual replacement containers totaling five percent (5%) of the number of Single Family Dwellings serviced. During 2007 and through the end of the service Term, Contractor shall be responsible for providing annual replacement containers totaling two percent (2%) of the number of Single Family Dwellings serviced. Should the City elect to extend the Agreement pursuant to Section 3.3, Contractor shall be responsible for providing additional replacement containers during each year of the extension totaling two percent (2%) of the number of Single Family Dwellings serviced. 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, all remaining containers owed to the City shall be provided within 30 calendar days, unless the City and Contractor mutually agree upon a reasonable form of compensation to the City for said 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, not to exceed \$50.00 per container inclusive of all costs, and the City shall

reimburse Contractor for said additional cost within thirty (30) days of receipt of a correct invoice.

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.

Contractor shall be required to provide all necessary replacement recycling containers for Multifamily Dwellings, except that upon prior notice to and approval from the City, Contractor may cease service at a Multifamily Dwelling if containers provided to the Multifamily Dwelling are chronically damaged or destroyed. Contractor shall cease billing the City for said units in the month following the discontinuance of service.

Contractor shall be required to provide all necessary replacement recycling containers for City Facilities.

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 and extended Term of this Agreement, Contractor shall be responsible for providing one replacement container per calendar year per Small Business for the subscribed level of service. Should the City elect to extend the Agreement for up to twelve months pursuant to Section 3.3, said amount of replacement containers shall be pro-rated in monthly increments based upon the total number of Small Business accounts receiving service at the end of the service Term. Should a participating Small Business require the replacement of more than one lost, stolen, damaged or destroyed containers in a calendar year, Contractor may charge the Small Business for additional replacement containers at Contractor's actual cost, which may include reasonable transportation and administration expenses.

18.4 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.

18.5 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. Contractor shall maintain adequate procedures, records, and controls to ensure separate and clearly identifiable material reporting of the materials collected by this Agreement.

18.5.1 Processing Facility Location and Permits. Any Processing Facility(ies) used by Contractor to fulfill obligations pursuant to this Article shall be located in an area zoned for this type of activity, and shall have all necessary permits and environmental review and clearance. This Article does not authorize or waive any permit requirements.

18.5.2 Processing System Capacity. The system shall have sufficient capacity to receive and process, within five (5) business 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 other acceptable contingency plan.

18.5.3 Processing Residue. Any Processing Facility located within the Oakland City limits shall use the City's franchise hauler to dispose of Residue. Maximum allowable Residue levels for Targeted Recyclable Materials are ten percent (10%) by weight for mixed waste paper and five percent (5%) by weight for all other Targeted Recyclable Materials. If Contractor is unable to market specific collected and processed materials, Contractor may request, in writing, authorization from the City Representative to dispose of said materials as Residue. The City Representative shall respond to Contractor in writing within ten (10) business days if authorization will be granted. Contractor shall demonstrate in writing that said materials are not marketable or that marketing said materials is not economically feasible, and the City shall not unreasonably withhold authorization.

18.6 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 of Oakland or the boundaries of the Oakland/Berkeley Recycling Market Development Zone. Contractor shall redirect materials subject to all of the following conditions: The City shall give at least ninety (90) days prior written notice of any material redirection. Contractor shall receive payment for the redirected material at a value to be mutually agreed upon at the time Contractor is notified to redirect material, but prior to the material being redirected.

18.7 Contractor's Public Education Requirement.

18.7.1 Public Education Budget. Contractor shall be required to allocate or spend \$30,000 each calendar year, beginning in 1999, on Program-related public education activities, which have received prior written approval from the City. In each subsequent year this amount shall be increased by the same percentage, if any, that Rates are increased pursuant to Section 15.3. The City and Contractor agree that the amount to be spent in the 2005 calendar year is \$36,316.42. 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 year-end shall be deducted from Contractor's monthly payment pursuant to Section 18.9 (g). Upon request by Contractor, the City may, at its option, authorize Contractor to carry forward up to \$15,000 of unspent funds to the following calendar year.

Upon request of the City, Contractor may provide additional public education services pursuant to the provisions of Section 14.2 and Exhibit G. The City shall reimburse Contractor for the cost of providing additional services in an amount to be agreed upon prior to the commencement of such services.

18.7.2 Public Education Activity Requirements.

(a) By September 1st of each year, commencing 1998, 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 telephone number, unless waived in writing by the City.

(e) All public education materials must include four languages whenever possible and/or needed (the City will make the 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.

(f) The City shall oversee all press activities including press releases, press conferences, press kits, press packets and general press inquiries regarding the Program.

(g) Public relations activities cannot be applied to the public education budget.

(h) 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 from the public education budget.

The following examples of public education activities would be considered appropriate for public education budget expenditure, and upon mutual agreement between the City and Contractor, could be funded from the public education budget:

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

- (ii) *Flyers placed in all Single Family Dwelling bins up to twice per year with the distribution to last for two consecutive weeks;*
- (iii) *Posting of up to one poster per year at each recycling bin location at Multifamily Dwellings;*
- (iv) *Instructional information distributed to Multifamily Dwelling property owners/managers to be included with Multifamily Dwelling rental agreements; and*
- (v) *Contribution to schools or other non-profit recycling public education projects such as Re-Festival or East Bay Depot.*

Activities that shall not qualify as public education expenditures:

- (i) *All activities associated with operational needs such as, but not limited to, uniforms, uniform maintenance, database management, recycling bin delivery, Customer support;*
- (ii) *All activities which are solely self promotion such as signage promoting only the company's name; and*
- (iii) *Tags for incorrect setouts.*

18.7.3 Multifamily 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) Prepare and send annually a survey and/or letter to building owners and managers of all participating dwellings informing them of Program parameters and soliciting feedback on Program services in order to maximize participation by buildings' residents.
- (b) Collection service shall be provided within two weeks of Program acceptance by the owner/manager of the Multifamily Dwelling.
- (c) Contractor delivery of recycling containers to Multifamily Dwellings shall include concurrent delivery by Contractor of the City provided public education materials.

18.8 Reporting Requirements. Contractor shall be required to keep records and submit reports to comply with City reporting requirements. The reports shall be in a format similar to that of Exhibit V and may be revised upon thirty (30) days notice to Contractor. Each subsequent change in requirements of the recycling report shall be sequentially numbered and attached hereto. In addition, Contractor shall be required to provide certified weight receipts for all materials collected through the Program. Said weight receipts must be obtained using a certified scale. Additionally, material reporting for collections from Single Family and Multifamily Dwellings shall be done separately by a methodology submitted by Contractor and approved by the City.

The City shall perform monitoring and statistical evaluation of the Program with the cooperation of Contractor. The City may, at any time, undertake inspections of Contractor's operations.

The City may also undertake inspections of Contractor's non-operational obligations pursuant to this Article. Said inspections will occur during Contractor's business hours and the City will provide a notification of at least twenty-four (24) hours.

18.8.1 Monthly Program Status Report. Contractor shall submit Monthly Program Status Reports for the duration of the 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 Report 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, which shall include the following data fields for each individual load collected:

1. Date
2. Facility
3. Route number
4. Single Family or Multifamily
5. Weight document number (unique, non-repeating number)
6. Net weight

(b) Summary report of tonnages of all materials, from all suppliers, programs and jurisdictions, shipped from Contractor's Processing Facility. Report shall include the following data fields:

1. Total net weight, in tons, of all fiber shipped for recycling from Contractor's Processing Facility.
2. Total net weight, in tons, of all containers shipped for recycling from Contractor's Processing Facility
3. Total net weight, in tons, of all Processing Residue shipped for disposal from Contractor's Processing Facility

(c) Detail report of new Multifamily Dwelling accounts shall include the following data fields:

1. Address
2. Name and phone number of contact person
3. Number of units
4. Service day
5. Route number
6. Date of delivery of containers and public education material

7. Number of containers by type

(d) 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. Start service date
5. Route number
6. Account active or inactive

(e) 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. A summary report of 1 through 3

(f) 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

18.8.2 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 tonnage recovered by route, except for used motor oil, which shall be measured by volume, for both Single Family and Multifamily 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

(f) List of vehicles in service including the following information for each vehicle

1. Contractor truck number
2. DMV license plate number
3. Body: Vehicle Identification Number, Make, Model Year
4. Chassis: Vehicle Identification Number, Make, Model Year

(g) Detail report of all Multifamily Dwelling accounts shall include the following data fields

1. Address
2. Name and phone number of contact person
3. Number of units
4. Service day
5. Route number
6. Number of containers by type

18.8.3 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 and Residential Food Scraps Containers delivered and remaining in stock

(d) Recommendations for modifications and/or improvements to the Program

18.8.4 Reports. A copy of any and all reports, manuscripts, software required to run said reports, and any other work product, whether completed or not, that are prepared or developed by Contractor under this Article, shall be considered the property of the City and shall be turned over to the City promptly at the City's request or at the termination of the Agreement.

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

(a) Contractor's monthly Single Family Dwelling price times the number of occupied Single Family Dwellings within the service area during the rate period. The City shall not pay Contractor for more than 55,972 Single Family Dwellings during the Term or any extended Term of this Agreement. Contractor acknowledges that the monthly rate charged for Solid Waste service to newly constructed and occupied Single Family Dwellings within its Service Area during the Term or any extended Term includes its cost for providing Program services. The City shall not be required to reimburse Contractor an additional amount for providing Program services to said dwellings.

(b) Contractor's monthly Multifamily Dwelling price times the number of units actually receiving service during the preceding 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 building and consistent with the agreement of building ownership or management. The City shall not pay Contractor for more than 19,045 units during the Term or any extended Term of this Agreement. Contractor acknowledges that the monthly rate charged for Solid Waste service to newly constructed and occupied Multifamily Dwellings within its Service Area during the Term or any extended Term includes its cost for providing Program services. The City shall not be required to reimburse Contractor for an additional amount for providing Program services to said dwellings.

(c) The value of any processed material redirected by the City for market development purposes as determined by the product of the number of tons and the material value determined pursuant to Section 18.6, less any adjustment for rejected material.

(d) Any charges made to the City for used motor oil filter collection pursuant to Section 18.9.1 (d).

(e) Deductions for the assessment of any liquidated damages.

(f) Deductions for obligations of Contractor that the City assumed pursuant to this Agreement.

(g) Deduction for unspent public education funds pursuant to Section 18.7.1.

(h) Deduction for premium backyard service equal to 1/3rd of the fee collected by Contractor for said service for each Single Family Dwelling receiving recycling collection outside of Contractor's Service Area.

(i) Deduction equal to Contractor's monthly Household Rate for recycling times the number of newly constructed and occupied Single Family Dwellings and Multifamily Dwelling units initiating Solid Waste collection service outside of Contractor's Service Area. Evidence that is acceptable to the City is (i) a Temporary Certificate of Occupancy as issued by the City's Community and Economic and Development Agency or (ii) confirmation of the commencement of Solid Waste collection service at a location that has previously not received Solid Waste collection

service within three years of the request for new service or has received Solid Waste collection service for fewer than the currently requested number of units. The deduction in Contractor's payment for units subject to this provision shall commence in the month following initiation of Solid Waste collection service. The number of units added shall be cumulative through the end of the service Term or any extended Term.

Contractor shall receive payment from the City within thirty (30) calendar days after the City receives a correct invoice. The City shall contact Contractor within ten (10) business days of invoice receipt if said invoice is incorrect. In the event 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 amount within thirty (30) calendar days.

18.9.1 Monthly Contractor's Payment.

(a) Beginning January 1, 2005, the City shall pay Contractor for service to Single Family Dwellings at the monthly rate of \$3.20.

(b) The City shall pay Contractor for service to 55,972 Single Family Dwellings.

(c) Beginning January 1, 2005 the City shall pay Contractor for service to Multifamily Dwellings at the monthly rate of \$3.20 per household.

(d) The City shall pay Contractor \$1.78 per used motor oil filter collected and recycled. Monthly reports and invoices shall indicate the number of used motor oil filters collected and recycled.

18.9.2 Annual Adjustment to Contractor's Payment. The per household and used motor oil filter payments to Contractor shall be adjusted upward or downward on January 1 of each year beginning January 1, 2006. The recycling rate payments to Contractor in effect as of December 31, 2005 and in each succeeding year of the Term will be adjusted, effective as of the immediately following January 1 of each year, by multiplying each such rate by one hundred percent plus eighty percent (80%) of the percentage change in the Consumer Price Index between the Annual Average (January-December) index in the year immediately preceding the year in which the rates are being changed and the Annual Average index twelve (12) months earlier. The annual increase or decrease in the recycling rate shall not exceed five percent (5%) in any one year.

18.9.3 Other Adjustments to Contractor's Payment. The City may adjust the payment made to Contractor for the events described in this section.

18.9.3.1 Termination of Used Motor Oil Collection Program. If Contractor's scope of service is modified by the action of changes in federal and/or state laws and regulations with respect to the termination of used motor oil collection, Contractor's per household payment will be adjusted equal to the amount of

the incremental cost of providing said service proposed by Contractor (\$0.04 per dwelling per month), as adjusted for inflation in accordance with Section 18.9.2.

18.9.3.2 Multifamily Recycling 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 City staff or authorized agents to ride along on collection vehicles, and access to all Multifamily Dwellings serviced, provided City staff or authorized agents follow Contractor's work and safety rules. 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 five percent (5%) of billed Multifamily Dwelling units audited are not being provided with Multifamily Recycling Collection Service, liquidated damages detailed in Exhibit A-1 may be assessed as set forth in Section 16.2.4.

In the event a collection service audit determines more than fifteen percent (15%) of Multifamily Dwelling units audited are not being provided with Multifamily Recycling 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 Multifamily Dwelling units not being provided with Multifamily Recycling Collection Service has dropped below fifteen percent (15%).

18.9.3.3 Alignment of Service and Billing. It is the intention of the City to compensate Contractor for all Multifamily Dwellings receiving Multifamily Recycling Collection Service and that Multifamily Recycling Collection Service will be provided to all Multifamily Dwellings for which the City is invoiced monthly.

18.9.3.4 Adding New Multifamily Dwellings. In order to add new Multifamily 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.

18.9.3.5 Removing Multifamily Dwellings. In the event it is determined through collection service audits or other means that Contractor is not providing Multifamily Recycling Collection Service to a Multifamily Dwelling, then upon notice from the City, Contractor shall remove the Multifamily Dwelling from its multifamily billing/service list for the next monthly billing period. The Multifamily Dwelling can only be reinstated to active billing/service status after Multifamily Recycling Collection Service has been re-established, per the requirements of Section 18.9.3.4.

18.9.4 Use of Contractor's Solid Waste Billing System. Contractor shall make its billing system for franchise Solid Waste collections available to the City for the collection of recycling service fees and the dissemination of education material. These services may include, but not be limited to:

(a) Imposition of a recycling surcharge, either on a per can or per household basis;

(b) The ability to provide a recycling surcharge discount, or to remove said discount to certain households based on specific criteria on a timely basis;

(c) Quarterly verification or summaries of said billing services provided by Contractor to the City; and

(d) The ability to include recycling education material in Contractor's billings to Customer, with reasonable notice.

The City, at its sole discretion, may elect to impose a recycling surcharge not covered in Section 8.3.4. Contractor shall collect and remit such surcharge to the City. In such event, the City shall be obligated to increase the Rates to generate a sufficient amount of revenue to cover the surcharge.

18.9.5 Profit Sharing Calculation. On a monthly basis, the City shall perform profit sharing calculations. This shall be calculated on the basis of $(0.50) * (\text{NetRev})$ where $\text{NetRev} = \text{Net Revenue}$ (calculated as Gross Revenues as reported in monthly reports of all tons marketed pursuant to this Article) less Processing Cost (as reported in monthly reports for all tons marketed pursuant to this Article).

Profit sharing payments to the City, as calculated above, will be deducted from Contractor's monthly payment only if the NetRev/ton , (calculated as NetRev divided by total tons marketed in the month pursuant to this Article) exceeds \$100/ton.

18.10 Assignment or Pledge of Monies by Contractor. Contractor shall not assign or pledge any of the monies due under this Article without securing the written approval of the surety(ies) on the performance and payment bonds and providing at least thirty (30) calendar days' prior notice to the City Representative of such assignment or pledge together with a copy of surety's approval thereof. Such assignment or pledge, however, shall not release Contractor or its sureties from any obligations or liabilities arising under or because of the Agreement.

18.11 Assignment of Copyright. If, in connection with recycling services performed under this Agreement, Contractor or its subcontractors create original artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship used for Public Education that the City pays for and is unique to the City, Contractor hereby assigns all copyrights to any such works to the City. With the approval of the City Representative, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities. Such copyright does not extend to works that are based on material separately conceived and developed by Contractor.

ARTICLE 19.00 – GENERAL PROVISIONS

19.1 Entire Agreement; Exhibits Included. This Agreement is executed in four (4) originals each of which is deemed to be an original. This Agreement consists of ninety-nine (96) pages and Exhibits A through YY attached hereto and constitutes the entire understanding and agreement of the City and Contractor with respect to the services to be provided under this Agreement. No prior written or oral statement or proposal shall alter any term or provision of this Agreement.

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

IN WITNESS WHEREOF, the City and Contractor have duly authorized execution of this Sixth Amendment to Franchise Agreement, and have executed this Sixth Amendment to Franchise Agreement effective July 1, 2005.

City of Oakland,
A municipal corporation

Contractor

Henri Atagun
City Administrator's Office Date

[Signature] 3/23/07
Signature Date

[Signature] 5-9-2007
Public Works Agency Date

Approved as to form and legality:

[Signature] 5-4-07
City Attorney's Office Date

11820 C.M.S.
Ordinance Number

P.O. #3568
Accounting Number

1335669
Business Tax Certificate Number