

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2004 APR 22 PM 1:06

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Public Works Agency
DATE: May 4, 2004

RE: **RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CALIFORNIA WASTE SOLUTIONS TO PROVIDE WEEKLY SINGLE STREAM RESIDENTIAL RECYCLING COLLECTION AND PROCESSING SERVICES IN THE NORTHERN HALF OF THE CITY FROM JANUARY 1, 2005 THROUGH DECEMBER 31, 2012 IN AN INITIAL AMOUNT OF APPROXIMATELY \$2,575,000 PER YEAR**

SUMMARY

A resolution has been prepared that authorizes the City Manager to enter into an agreement with California Waste Solutions (CWS) to provide weekly single stream residential recycling collection and processing services in the area generally north and west of East 18th Street, Park Boulevard, Lincoln Avenue and Joaquin Miller Road. There are approximately 73,000 single-family and multi-family housing units in the service area. The term of the agreement is from January 1, 2005 through December 31, 2012. The City will pay CWS approximately \$2,575,000 during the first year of the agreement. The amount of the agreement may increase based upon annual changes in the Consumer Price Index (CPI) and an increase in the number of housing units serviced.

This is one of four reports being submitted to the City Council on weekly single stream recycling, weekly yard waste collection and food scraps recycling. The other reports authorize an amendment of the Franchise Agreement with Waste Management of Alameda County to provide weekly recycling services in the Southern part of the City and weekly yard waste and food scraps recycling throughout the City; an agreement with the Alameda County Waste Management Authority for partial funding of a residential food scraps recycling program; and an ordinance to increase garbage rates to pay for weekly single stream recycling, weekly yard waste collection and food scraps recycling.

This agreement is consistent with the following Mayor and City Council goals and objectives 2C and 3C:

Develop a Sustainable City: Implement programs that protect and conserve natural resources.

Improve Oakland Neighborhoods: Reduce blight and nuisance.

Staff recommends approval of the resolution.

Item:

15
City Council
May 4, 2004

FISCAL IMPACT

The City will pay CWS \$3.20 per household per month (approximately \$2,575,000 per year) to provide weekly residential recycling collection and processing services within its service area (Fund 1710, Organization 30282, Account 54919). Funds to pay for this service come from Measure D fees provided by the Alameda County Source Reduction and Recycling Board (\$1,300,000) and from recycling fees collected by Waste Management of Alameda County on the garbage bill (\$1,275,000). The increased cost of this agreement, and the change to weekly recycling in the area of the City serviced by Waste Management of Alameda County (WMAC), will increase the garbage bill for multi-family residences by \$0.36 per month on July 1, 2004 and by an additional \$0.36 per month on July 1, 2005. The increased cost for single-family residences will be \$0.41 per month on July 1, 2004 and an additional \$0.41 per month on July 1, 2005. If the City Council approves the staff recommendation to implement a residential food scraps recycling program, the garbage rates for single-family residences will increase by an additional \$0.87 per month on July 1, 2004 and on July 1, 2005.

In accordance with City policy, one-time Contract Compliance fees of \$77,250 will be assessed to this agreement and allocated to the City Manager's Office – Contract Compliance and Employment Services Division.

BACKGROUND

On November 4, 2003 the City Council heard a report from the Public Works Agency that recommended a Request For Proposals be issued to obtain a residential recycling collection and processing service provider for the area of the City currently serviced by CWS. After a presentation by staff, and a discussion of alternative options, the City Council directed staff to enter into exclusive negotiations with CWS. CWS is an Oakland company and has been servicing this area of the City since 1992. The City Council also directed staff to return in February 2004 if an agreement could not be negotiated.

Staff and representatives from CWS have been diligently negotiating an agreement for weekly single stream recycling services and have reached an accord on an eight-year agreement, subject to City Council approval. Under the terms of the proposed agreement, CWS will change its existing collection service from the blue and yellow 18-gallon tub-style recycling bins to a single stream 64-gallon cart for all recyclables. This change should improve the recycling program as:

- Residents will not have to source separate materials (e.g. paper, glass, cans, etc.);
- Residents can roll the cart to the curb rather than carry two bins of recyclables to the curb; and
- Being containerized, materials do not get wet or scattered by the wind thereby reducing litter in the neighborhood.

Item: _____
City Council
May 4, 2004

CWS has been the recycling collection and processing service provider in the Northern part of the City since 1992. In 1996 CWS acquired the recycling contract from Karl's Recycling/Pacific Rim Recycling for the portion of their current service area that is closest to Park Boulevard and also includes the Montclair hills. CWS' current contract for providing weekly recycling collection and processing services expires on December 31, 2004.

KEY ISSUES AND IMPACTS

Length of Contract

CWS has proposed an eight-year agreement to commence on January 1, 2005 and end on December 31, 2012. This will allow CWS to amortize their vehicles and single stream carts over a reasonable period of time. An agreement of shorter duration would require a higher monthly rate as the equipment would have to be financed over a shorter period of time.

Upon approval of this agreement by the City Council, staff will submit a request to the Alameda County Source Reduction and Recycling Board (Board) to obtain their approval of the contract length. The City will use all of its annual Measure D funds received from the Board to pay for a portion of the CWS agreement. Measure D stipulates that funds may not be used for agreements exceeding five years unless the Board finds that a longer period is necessary in order to capitalize a specific project. In 1997 the Board approved CWS' current seven-year agreement.

At the end of the proposed eight-year agreement, the City at its sole discretion, may extend the agreement for up to three years under the then existing terms and conditions. In addition, the City and CWS may mutually consent to extend the agreement on a month-to-month basis for up to twelve months at the end of the agreement or at the end of the extended term of the agreement.

Implementation Period

By August 1, 2004 CWS must submit a detailed implementation plan addressing all foreseeable program start-up issues. CWS and WMAC will be using the same company to deliver the single stream recycling carts and CWS will be able to start the delivery of its carts on January 17, 2005. Residential food scraps recycling containers for the new program to be implemented by WMAC will also be delivered to all single-family residences at the same time. It is anticipated that it will take approximately three months to phase in single stream recycling to all of the residences within the CWS service area.

Rate and Annual Adjustment

The City will pay CWS \$3.20 per month for each single-family and multi-family household that receives recycling service. The City is currently paying CWS \$2.72 per month for each customer serviced. The increase is due to the switch to a single stream cart that must be

Item: _____
City Council
May 4, 2004

amortized over the length of the agreement. The City is also requiring that CWS purchase new recycling collection vehicles that comply with the California Air Resources Board diesel emission regulations.

The City hired Environmental Science Associates (ESA) to review the information that was used by CWS to develop the proposed rate. ESA was requested to determine the accuracy and reasonableness of the information and to compare the rate to industry standards. ESA also reviewed the rates being paid for recycling services in other Bay Area cities. ESA concluded that the rate requested by CWS is within industry norms for the collection and processing of materials included in the agreement.

The monthly household rate paid to CWS will be adjusted in January of each year based upon eighty percent (80%) of the change in the annual average January-December Consumer Price Index. This is the same index used for calculating the rate adjustment in the Franchise Agreement with WMAC for solid waste, yard waste and recycling services.

Single Stream Recycling Collection

Each single-family residence will be provided with a 64-gallon recycling cart in which the residents will be able to place co-mingled paper, cans, bottles, plastic, cardboard, etc. Residential dwellings with two, three and four units will receive up to two 64-gallon carts depending upon the level of recycling participation. The carts will be grey in color and have a color embossed lid to show the type of materials that are acceptable for collection. Most multi-family dwellings (5+ units) currently have 64-gallon recycling carts. CWS will change the labels on these carts to show that recyclable materials do not have to be separated and can be placed in any of the carts. Carts at single-family residences will be emptied at curbside, while most multi-family dwellings will receive on-premise service.

Residents who currently receive backyard solid waste and yard waste service by paying for premium backyard service; qualifying for a curbside placement exemption because of terrain; or qualifying as frail senior citizens or disabled, will receive backyard recycling collection service. The rate for premium backyard service will be increased by \$4.25 to reflect the emptying of an additional cart.

Small Business Recycling

CWS will provide recycling collection and processing for small businesses that set out up to two 96-gallon carts per week. CWS will provide a subscription based service for small businesses and the monthly rate for weekly service will be \$7.50 for a 64-gallon cart and \$10.00 for a 96-gallon cart. CWS has agreed to empty small business recycling carts between 6:00 a.m. and 10:00 a.m. Tuesday through Friday in the Chinatown, Grand Avenue, Lakeshore, Montclair,

Item: _____
City Council
May 4, 2004

Piedmont Avenue, Rockridge and Temescal business districts to reduce traffic congestion and the impact collection might have on business operations.

Public Education and Customer Service

The City will work with CWS and WMAC to develop educational materials to inform residents about the change to single stream recycling. The materials will be provided in English, Spanish, Chinese and Vietnamese. Educational materials will be delivered with the cart, and staff is working with the City Manager's Cultural Arts and Marketing Department to develop other outreach activities.

During the implementation period of this agreement, CWS will staff its office from 8:00 a.m. to 6:00 p.m. CWS will also provide an answering machine or service for customer service/complaint calls outside of normal office hours.

Equipment

Under the terms of the agreement, CWS is required to purchase recycling collection vehicles no older than the 2003 model year and vehicles that also comply with the promulgated California Air Resources Board regulations for diesel emissions. CWS will need to purchase twelve vehicles to adequately service its collection routes. All of the collection vehicles will be equipped with global positioning equipment capable of providing a report indicating the time and location of the vehicle while on its route. This information will be useful in addressing customer service issues and complaints. CWS will also be purchasing approximately 40,000 single stream recycling carts.

Facility Relocation/Improvements

At the City Council meeting on November 4, 2003 staff was asked to facilitate a meeting between CWS and the Community and Economic Development Agency (CEDA) to discuss the relocation of CWS' processing facilities. CWS currently operates two processing facilities in West Oakland and utilizes a third location for storage of their collection vehicles. It was determined that CWS needs a minimum of five acres to consolidate its operations. To date, Economic Development staff has been unable to locate a parcel of this size in another section of Oakland. While the Oakland Army Base has land that would be sufficient in size to accommodate the relocation of CWS' operations, it is not considered a viable option at this time. CEDA staff will continue to look for an area outside of the Oakland Army Base for CWS.

Several of the neighbors living in the vicinity of CWS' processing facility at 1820 10th Street have complained about dust and odors. CWS has agreed to hire a professional engineer experienced in the assessment and installation of dust suppression systems to inspect the location and to make recommendations for facility improvements to minimize these two problems. CWS

Item: _____
City Council
May 4, 2004

has committed to expend up to \$25,000 for this work. It is expected that this work will be completed in 2005.

Living Wages and Worker Retention

CWS' labor contracts expire at the end of its existing recycling collection and processing agreement with the City on December 31, 2004. This new agreement is subject to the City's Living Wage Ordinance and its implementing regulations. As of July 1, 2004 the hourly living wage rate will be \$10.34 with health benefits or \$11.90 without health benefits. The payment of living wage rates may be waived by the union in a bona fide collective bargaining agreement if the waiver is explicitly set forth in the agreement in clear and unambiguous terms.

Staff has included a worker retention provision in the new agreement in the event CWS requests approval to assign the agreement to another party prior to its December 31, 2012 expiration date. This provision would apply to the 12 collection route drivers, 2 mechanics, and 18 sorters who will work on the Oakland agreement.

Local/Small Local Business Enterprise Program

CWS is certified as a local business under the City's Local/Small Local Business Enterprise (L/SLBE) Program and will receive credit for achieving the 10% local business goal. CWS has agreed to utilize other Oakland businesses when purchasing goods and services.

SUSTAINABLE OPPORTUNITIES

Economic: CWS is a locally owned company and approximately 90% of its workforce are Oakland residents. Recycling creates opportunities for local market development for recyclables processing as well as secondary materials reuse and remanufacturing.

Environmental: CWS is required to purchase new collection vehicles that meet the California Air Resources Board regulations for diesel emissions. CWS is also being required to hire a professional engineer to make recommendations to reduce dust and odors coming from the processing facility. CWS vehicles are required to stay on designated truck routes unless the vehicle is actually collecting recyclables in the area.

Social Equity: The requirements for new vehicles and facility improvements will improve air quality in the area around the CWS processing facility.

DISABILITY AND SENIOR CITIZEN ACCESS

Frail senior citizens and the disabled will receive backyard recycling collection service at no additional charge. The new single stream recycling container can be rolled and customers no longer have to carry bins of recyclable materials to the curb for collection.

Item: _____
City Council
May 4, 2004

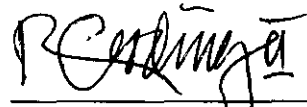
RECOMMENDATION

Staff recommends approval of the eight-year agreement with CWS for residential recycling collection and processing services. The change to a single stream recycling container will enhance the program and improve CWS' service to its customers.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolution.

Respectfully submitted,



RAUL GODINEZ II, P.E.
Director, Public Works Agency

Reviewed by:
Brooke A. Levin, Interim
Assistant Director, Public Works Agency

Prepared by:
Harry Schrauth, Interim
Recycling & Solid Waste Programs Supervisor

**APPROVED AND FORWARDED
TO THE CITY COUNCIL:**


OFFICE OF THE CITY MANAGER

Item: 15
City Council
May 4, 2004

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2004 APR 22 PM 1:06

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C. M. S.

INTRODUCED BY COUNCILMEMBER _____

Roller

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CALIFORNIA WASTE SOLUTIONS TO PROVIDE WEEKLY SINGLE STREAM RESIDENTIAL RECYCLING COLLECTION AND PROCESSING SERVICES IN THE NORTHERN HALF OF THE CITY FROM JANUARY 1, 2005 THROUGH DECEMBER 31, 2012 IN AN INITIAL AMOUNT OF APPROXIMATELY \$2,575,000 PER YEAR

WHEREAS, the City desires to continue its Residential Recycling Program (Program) for the collection, processing, and marketing of recyclable materials; and

WHEREAS, on November 4, 2003 the City Council directed staff to enter into exclusive negotiations with California Waste Solutions (CWS) to provide such service; and

WHEREAS, the City and CWS entered into and completed negotiations for a Program to commence on January 1, 2005 through and including December 31, 2012; and

WHEREAS, CWS represents that it has the necessary experience and expertise to provide the Program and that it has demonstrated it is qualified and competent to provide the required services; and

WHEREAS, the City and CWS desire to enter into an Agreement whereby CWS shall perform weekly single stream residential recycling collection and processing services related to the City's Program; and

WHEREAS, the City Council finds that the services provided pursuant to the Agreement authorized hereunder are of a professional, scientific or technical nature and are temporary in nature; and

WHEREAS, the City Council finds that this Agreement shall not result in the loss of employment or salary by any person having permanent status in the competitive service; now, therefore, be it

RESOLVED: That the City Manager is hereby authorized and empowered to execute an Agreement with California Waste Solutions to provide weekly single stream residential recycling collection and processing services, and to approve any subsequent amendments to or extensions of said Agreement with the exception of those related to an increase in compensation for work not included in said Agreement or for increases in compensation beyond the procedures the City has set forth in this Agreement, provided that such agreements and amendments or extensions shall be approved by the City Attorney's Office and shall be filed with the City Clerk's Office; and be it

15
ORACOUNCIL

MAY 4 2004

FURTHER RESOLVED: That the Council establishes a base rate to be paid to CWS of \$3.20 per household by the City which rate shall be adjusted annually by the Consumer Price Index based on the formula contained in the Agreement; and be it

FURTHER RESOLVED: That a copy of the agreement will be on file with the City Clerk's Office and will be approved for form and legality by the Office of the City Attorney.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

15
ORA/COUNCIL

MAY 4 2004

AGREEMENT FOR
RESIDENTIAL RECYCLING SERVICES

Between

THE CITY OF OAKLAND

And

CALIFORNIA WASTE SOLUTIONS



ORA/COUNCIL

MAY 4 2004

TABLE OF CONTENTS

RECITALS	1
ARTICLE 1.00 -- DEFINITIONS	2
1.1 AB 939	2
1.2 Agreement.....	2
1.3 City.....	2
1.4 City Facility	2
1.5 City Legislation.....	2
1.6 City Representative	2
1.7 Consumer Price Index or Index.	3
1.8 Contaminant.....	3
1.9 Contract Manager.....	
.....	
1.10 Contractor.	3
1.11 Customer	3
1.12 Director	3
1.13 Effective Date	3
1.14 Extended Term.....	3
1.15 Force Majeure	3
1.16 Hazardous Waste	3
1.17 Household Rate.....	4
1.18 Multi-Family Dwelling	4
1.19 Non-Recyclable Contaminant.....	
1.20 Non-Targeted Recyclable Materials.....	
1.21 Oakland Municipal Code	4
1.22 Plastic Containers.....	4
1.23 Processing	5
1.24 Processing Residue.....	
.....	
1.25 Program.....	5
1.26 Recyclable Material	5
1.27 Residential Recycling Services.....	5
1.28 Service Area.....	5
1.29 Service Term.....	5
1.30 Single Family Dwelling	5
1.31 Small Business	5
1.32 Solid Waste	5
1.33 Source Separated Materials.....	6
1.34 Solid Waste Franchise Agreement.....	6

1.35	Targeted Recyclable Materials	6
ARTICLE 2.00 -- REPRESENTATIONS AND WARRANTIES OF CONTRACTOR.....		6
2.1	Duly Organized and Qualified to do Business.....	6
2.2	Corporate Authorization.	7
2.3	Agreement Duly Executed.....	7
2.4	No Conflict with Applicable Law or Other Documents.	7
2.5	No Litigation.....	7
2.6	Financial Ability, Disclosures, No Material Change.	7
2.7	Expertise.	7
2.8	Contractor's Investigation.	7
ARTICLE 3.00 -- TERM AND SCOPE OF AGREEMENT.....		8
3.1	Service Term.....	8
3.2	Extended Term.....	8
3.3	Evaluation of Performance	8
3.4	Conditions to Effectiveness of Agreement.	8
3.4.1	Obligation of City to Perform.....	8
3.4.1.1	Accuracy of Representation.....	8
3.4.1.2	Absence of Litigation.....	8
3.4.1.3	Furnishing of Bond and Insurance.....	8
3.4.1.4	Effectiveness of City Approval.....	8
3.4.1.5	Implementation Plan.	9
3.4.2	Obligation of Contractor to Perform.....	9
3.4.2.1	Absence of Litigation.....	9
3.4.2.2	Effectiveness of City's Approval.	9
3.4.3	Notice.....	9
3.5	Grant and Scope of Agreement.....	9
ARTICLE 4.00 -- SERVICES PROVIDED BY CONTRACTOR		10
4.1	General.....	10
4.1.1	Transfer of Loads on Public Streets and Roads.	10
4.1.2	Source Separated Recyclables.....	
4.1.3	On Site Sampling.....	
4.1.4	Contamination	
Remedies.....		
4.2	Contractor's Service Area	10
4.3	Single Family Dwelling Collection and Service Requirements.	11
4.3.1	Frequency of Collection.....	11
4.3.2	Material Preparation Requirements.	11
4.3.3	Collection Time and Location	11
4.3.4	Material Handling.....	12
4.3.5	Recycling Containers	13
4.3.6	Replacement of Recycling Containers.....	13

4.4	Multi-Family Dwelling Collection and Service Requirements	14
4.4.1	Frequency of Collection.....	14
4.4.2	Material Preparation Requirements.	14
4.4.3	Collection Time and Location	15
4.4.4	Material Handling.....	15
4.4.5	Recycling Containers.....	16
4.4.6	Replacement of Recycling Containers.....	16
4.4.7	Collection Service	
Audits.....		
4.4.8	Alignment of Service and	
Billing.....		
4.4.8.1	Adding New Multi-Family	
Dwellings.....		
4.4.8.2	Removing Multi-Family	
Dwellings.....		
4.5	City Facility Collection and Service Requirements.....	16
4.5.1	Frequency of Collection.....	16
4.5.2	Material Preparation Requirements	17
4.5.3	Material Handling.....	17
4.5.4	Recycling Containers.....	17
4.5.5	Replacement of Recycling Containers.....	18
4.6	Small Business Collection and Service Requirements.	18
4.6.1	Frequency of Collection.....	18
4.6.2	Small Business Material Preparation Requirements.....	18
4.6.3	Minimum Amounts and Setouts	19
4.6.4	Handling and Delivery.....	19
4.6.5	Small Business Recycling Containers	20
4.6.6	Replacement of Recycling	
Containers.....		
4.6.7	Small Business	
Rates.....		
4.6.6	Right to Recycle.....	20
4.6.7	Collection Method and Time.	21
4.6.8	Public Education.	21
4.7	Changes in Scope of Work.	21
4.7.1	General.....	21
4.7.2	New Programs.....	21
4.7.3	Implementing Changes in Service.	22
4.7.4	New Technology.....	22
4.8	Ownership of Recyclables	22
ARTICLE 5.00 -- HAZARDOUS WASTE.....		23
5.1	Hazardous Waste	23
5.1.1	General.....	23
5.1.2	Notice to Customers.....	24
5.1.3	Contractor to Segregate and Dispose.....	24

5.1.4	Operating Procedures and Employee Training	24
5.2	Remediation of Spills.....	24
5.3	Record Keeping.	25
ARTICLE 6.00 -- PROGRAM EQUIPMENT		25
6.1	Collection Vehicle Specifications, Maintenance and Appearance	25
6.2	Collection Vehicle Noise Levels	26
6.3	Collection Vehicle Drivers/Driver's Helpers Uniform	26
6.4	Collection Vehicle Global Positioning System.....	
6.5	Collection Vehicle	
Financing.....		
6.6	Vehicle	
Inventory.....		
6.7	Equipment Inventory	26
ARTICLE 7.00 -- PROCESSING REQUIREMENTS.....		26
7.1	Processing Facility Location and Permits.....	26
	7.1.1 Processing Facility's Relationship to Neighborhood.	26
7.2	Processing System Capacity	27
7.3	Processing Residue.	27
7.4	Disposal	
Prohibition.....		
7.5	On-Site	
Sampling.....		
ARTICLE 8.00 -- FLOW CONTROL OF PROCESSED MATERIAL		27
ARTICLE 9.00 -- CONTRACTOR'S PUBLIC EDUCATION REQUIREMENTS		28
9.1	Public Education Budget.....	28
9.2	Public Education Activity Requirements.....	28
9.3	Multi-Family Dwelling Outreach	
Program.....		
ARTICLE 10.00 -- PUBLIC ACCESS TO CONTRACTOR		30
10.1	Office Facilities.....	30
10.2	Telephone Access	30
10.3	Saturday Service	30
ARTICLE 11.00 -- REPORTING REQUIREMENTS.....		31
11.1	Monthly Program Status Report	31
11.2	Quarterly Program Status Report.....	32
11.3	Annual Program Status Report	33
11.4	Other Reports or Information.....	34
ARTICLE 12.00 -- PAYMENT TO CONTRACTOR		34

12.1	Monthly Payment to Contractor.....	35
12.2	Monthly Household Rate.....	
12.3	Annual Adjustments to Contractor's Household Rate	35
12.4	Other Adjustments to Contractor's Payment.....	36
12.5	Windfall Profit Sharing.....	36
12.6	City/Contractor Meetings.....	
ARTICLE 13.00 -- DEFAULTS AND REMEDIES.....		37
13.1	Events of Default.	37
13.2	Remedies.....	39
	13.2.1 Termination.....	39
	13.2.2 Possession of Property Upon Default.	39
	13.2.3 Direct and Consequential Damages.	39
	13.2.4 Liquidated Damages.	40
	13.2.4.1 General.....	40
	13.2.4.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards.	40
	13.2.5 Deduction from Payments because of Contractor's Failure to Make Collections	42
	13.2.5.1 Notice to Contractor.....	43
	13.2.5.2 Amount.....	
	13.2.6 Specific Performance.	43
	13.2.7 Right to Demand Assurances of Performance.	43
	13.2.8 City's Remedies Cumulative.	43
13.3	Excuse from Performance.....	44
	13.3.1 Force Majeure.	44
	13.3.2 Obligation to Restore Ability to Perform.....	44
	13.3.3 Notice.....	44
	13.3.4 City's Right in the Event of Force Majeure.	44
13.4	City's Right in the Event of Change in Law.	44
13.5	Dispute Resolution.....	45
	13.5.1 Meet and Confer.	45
	13.5.2 Mediation.	45
ARTICLE 14.00 -- PERFORMANCE BOND		45
14.1	Performance Bond or Alternative Security.....	45
14.2	City's Right to Draw Against Performance Bond.....	45
	14.2.1 Contractor's Obligation to Replenish Performance Bond.....	46
14.3	Termination of Performance Bond.	46
ARTICLE 15.00 -- INSURANCE		46
15.1	Contractor's Agreement to Provide Insurance.	46
15.2	Comprehensive General Liability Insurance.	46
15.3	Automobile Liability Insurance.	47

15.4	Workers' Compensation Insurance.	47
15.5	Environmental Impairment Liability Insurance.	47
15.6	Additional Insureds.	47
15.7	Deductibles and Self-Insured Retentions.	47
15.8	City's Right to Cure.	48
15.9	Annual Aggregate Limit.	48
15.10	Cancellation and Duration of Coverage.	48
15.11	Interpretation.	48
15.12	Companies.	48
ARTICLE 16.00 -- INDEMNITY		48
16.1	Contractor's Duty to Indemnify City.	48
16.2	City to Provide Notice of Claims.	49
16.3	Hazardous Waste Indemnification.	49
16.4	AB 939 Indemnification.	50
ARTICLE 17.00 -- GENERAL PROVISIONS		50
17.1	Subcontracting.	50
17.2	Coordination with Other City Services.	50
17.3	Nondiscrimination.	50
17.3.1	Equal Employment Practices.	50
17.3.2	Treatment of Customers.	51
17.4	Compliance with the City's MBE/WBE and SLBE Programs.	51
17.4.1	Ownership and Workforce Composition.	
17.4.2	Affirmative Action Efforts.	
17.4.3	Recruitment of Subcontractors.	
17.4.4	Sale of Recyclables for LBE/SLBE Credit.	
17.5	Compliance with City's Affirmative Action Employment and Local Employment Programs.	51
17.6	Contractor An Independent Contractor.	52
17.6.1	No Partnership or Joint Venture Created.	52
17.6.2	No Entitlement to Benefits.	52
17.6.3	Non-Exclusive Relationship.	
17.7	Wages.	52
17.7.1	Living Wage Requirements.	52
17.7.1.1	Minimum Compensation.	
17.7.1.2	Health Benefits.	
17.7.1.3	Compensated Days Off.	

17.7.1.4 Federal Earned Income Credit (EIC).....	
17.7.1.5 Notice to Employees.....	
17.7.1.6 Reporting.....	
17.7.1.7 Subcontractor Obligations.....	
17.7.2 Payment of Income Taxes.....	52
17.8 Religious Prohibition.....	53
17.9 Political Prohibition/Campaign Contributions.....	53
17.10 Business Tax Certificate.....	53
17.11 Equal Benefits Ordinance.....	53
17.12 Nuclear Free Zone	
Disclosure.....	
17.13 Conflict of Interest/Agents/Brokers.....	53
17.14 Attorney's Fees.....	54
17.15 Notices.....	54
17.16 Waiver.....	55
17.17 Assignment.....	55
17.17.1 Events Considered to be Assignments.....	55
17.17.2 Provision of Vital Services.....	56
17.17.3 City's Consent to Assignment.....	56
17.17.4 Worker	
Retention.....	
17.18 Defense of Agreement Rights.....	56
17.19 Captions.....	57
17.20 Interpretations.....	57
17.21 References to Laws.....	57
17.22 Governing Law.....	
17.23 Validity of	
Contracts.....	
17.24 Amendment.....	57
17.25 Jurisdiction.....	57
17.26 Severability.....	57
17.27 Cooperation with Subsequent Providers.....	58
17.28 Access to and Disclosure of Records.....	58
17.28.1 Access to Records.....	58
17.28.2 Confidential	
Information.....	
17.28.3 Permitted Release of Information.....	58
17.28.4 Required Release of Confidential Information.....	59
17.29 Parties in Interest.....	59
17.30 Compliance with Law.....	59

17.31	Permits, Authorizations, Licenses.....	59
17.32	Permits for Use of Facilities.	60
17.33	Audit	60
17.34	Inspection of Facilities and Operational Records.	61
17.35	Entire Agreement; Attachments Included.....	61
17.36	Inconsistency.....	
.....		
17.37	Recitals.....	
.....		

LIST OF ATTACHMENTS

- A. List of City Facilities
- B. Non-Targeted Recyclable Materials
- C. Performance Bond
- D. Implementation Plan
- E. Service Area Map
- F. Small Business Subscription Rates
- G. Processing Facility's Relationship to Neighborhood
- H. Report Formats
- I. Liquidated Damages
- J. Declaration of Compliance with the Americans with Disabilities Act
- K. Local and Small Local Business Enterprise Program
- L. Professional Services Questionnaire
- M. Project Consultant Team
- N. Employment Questionnaire
- O. Local Employment Program
- P. Independent Contractor Questionnaire
- Q. Living Wage Ordinance Declaration of Compliance
- R. Acknowledgment of Campaign Contribution Limits Form
- S. Equal Benefits Declaration of Nondiscrimination
- T. Nuclear Free Zone Disclosure Form
- U. List of all Current Permits held by Contractor for Operation of Facilities
- V. Small Business Service Area

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

RESIDENTIAL RECYCLING SERVICES

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

RECITALS

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

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

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

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

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

WHEREAS, the City and Contractor desire to leave no doubts as to their respective roles, and that by entering in this Agreement, the City is not thereby becoming a "generator" or an "arranger" as those terms are used in CERCLA ' 107(a)(3), and that it is Contractor, not the City, which is "arranging for" the collection and recycling of Targeted Recyclable Materials from Customers in Oakland which Targeted Recyclable Materials may contain Hazardous Waste; and

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

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

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

ARTICLE 1.00 -- DEFINITIONS

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

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

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

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

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

1.6 City Representative. The City Administrator shall be the City's Representative. The City Administrator may designate one or more City employees to act as his/her representatives to Contractor regarding the requirements of this Agreement, and shall notify Contractor of the scope of his/her representatives' authority to act in regards to those matters.

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

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

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

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

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

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

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

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

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

1.16 Hazardous Waste. For purposes of this Agreement, Hazardous Waste shall include those wastes defined as Hazardous Waste in Oakland Municipal Code Section 8.28.010 or as subsequently amended. Section 8.28.010 currently defines Hazardous Waste as any hazardous waste, material, substance or combination of materials which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or may pose a substantial present or potential risk to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed; and which requires special handling under any present or future federal, state or local law, excluding de minimis quantities of waste of a type and amount normally found in residential solid waste after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Sections 41500 and 41802 of the California Public Resources Code.

"Hazardous Waste" shall include, but not be limited to: (a) substances that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials, toxic substances or related hazardous materials; and (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.

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

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

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

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

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

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

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

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

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

1.26 Recyclable Material. For the purpose of this Agreement, "Recyclable Material" or "Recyclables" shall mean non-hazardous residential, commercial or industrial materials or by-products which are set aside, handled, packaged or offered for collection in a manner different than Solid Waste, for the purpose of being reused or processed and then returned to the economic mainstream in the form of commodities, and includes Source Separated Materials as defined in the Oakland Municipal Code. Used motor oil and used motor oil filters properly set out for collection shall also be included in the definition of "Recyclable Material".

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

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

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

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

1.31 Small Business. "Small Business" means a business located within the Small Business Service Area of Contractor as defined by the map attached as Attachment V and (a) uses can/cart service for Solid Waste or (b) shares bin service for Solid Waste with other Small Businesses or (c) generates an amount of Recyclables up to 2-96 gallon containers per week or up to 1-96 gallon container and one (1) yard of corrugated

cardboard. Unless otherwise requested by the owner(s) of an in-home office(s), an in-home office shall be eligible to participate in the Program as a Single Family Dwelling but without any special considerations or privileges other than those provided to the dwelling unit.

1.32 Solid Waste. "Solid Waste" shall mean all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not Hazardous Waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semi-solid wastes as defined in California Public Resources Code Section 40191, as that Section may be amended from time to time, but does not include Source Separated Recyclables, abandoned vehicles and parts thereof, Hazardous Waste or low-level radioactive waste, medical waste, unacceptable waste or yard waste.

1.33 Source Separated Materials. "Source Separated Materials" shall mean Targeted Recyclable Materials that have been segregated from Solid Waste by or for the generator thereof on the premises at which they were generated for handling in a manner different from that of Solid Waste.

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

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

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

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

**ARTICLE 2.00 -- REPRESENTATIONS AND WARRANTIES OF
CONTRACTOR**

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

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

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

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

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

2.5 No Litigation. There is no action, suit, proceeding or, to the best of Contractor's knowledge, investigation at law or equity, before or by any court or governmental entity, pending or threatened against Contractor or otherwise affecting Contractor, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect Contractor's performance hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Contractor.

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

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

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

ARTICLE 3.00 -- TERM AND SCOPE OF AGREEMENT

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

3.2 Extended Term. The City may extend the Service Term at its sole discretion for up to three (3) years under the then existing terms and conditions. The City shall give Contractor notice in writing no less than twelve (12) months prior to the end of the Service Term of its intent to exercise the extension option. At the expiration of the Service Term or extended Service Term, this Agreement may be continued on a month-to-month basis with the mutual consent of the City and Contractor for up to a maximum of twelve (12) months.

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

3.4 Conditions to Effectiveness of Agreement.

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

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

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

3.4.1.3 Furnishing of Bond and Insurance. Contractor shall have furnished the Performance Bond, required pursuant to Article 14.00 and in substantial conformance with Attachment C, and the evidence of insurance policies required by Article 15.00, meeting all the requirements of this Agreement.

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

3.4.1.5 Implementation Plan. Contractor shall submit, no later than August 1, 2004, subject to review and approval by the City, a detailed implementation plan addressing all foreseeable Program start-up issues, which shall be included as Attachment D. Contractor shall not commence the delivery of Single Stream containers prior to January 17, 2005. The City's approval of the implementation plan shall not be unreasonably withheld.

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

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

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

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

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

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

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

ARTICLE 4.00 -- SERVICES PROVIDED BY CONTRACTOR

4.1 General. Contractor shall provide recycling collection, Processing and marketing services as described in this Agreement. Contractor shall provide all labor, materials, equipment, supplies, supervision and other items necessary for the performance of the services under this Agreement. The enumeration of, and specifications of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated or not. The work to be performed by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that Customers within the Service Area are provided reliable, courteous and high-quality Residential Recycling Services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided for in this Article, whether such other aspects are enumerated elsewhere in this Agreement or not.

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

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

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

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

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

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

City and Contractor shall evaluate and implement other strategies at Contractor's expense to reduce the amount of Non-Recyclable Contaminants below 10%.

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

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

Service Area boundary disputes shall be resolved by the Director, whose decision will be final. The Director may also make minor adjustments to Service Area boundaries as required to increase the Program's effectiveness and efficiency. These adjustments shall be limited to a maximum increase or decrease of the number of dwellings in Contractor's Service Area of one and one-half percent (1.5%) estimated by the City to be in the Service Area as of Agreement execution (70,000). The City and Contractor may mutually agree upon increases or decreases greater than said amounts.

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

4.3 Single Family Dwelling Collection and Service Requirements.

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

4.3.2 Material Preparation Requirements.

- a. Single Family Dwellings will be required to place commingled Targeted Recyclable Materials in a recycling container provided by Contractor.
- b. Corrugated cardboard is required to be flattened and no larger than 3' by 3' and be set out (1) stacked or bundled next to a recycling container, (2) or in the recycling container provided by Contractor. Contractor is

obligated to collect all corrugated cardboard meeting the dimensional requirements that is set out for collection.

- c. Used motor oil is required to be placed in a Contractor-provided container and placed next to the recycling container. Contractor may decline collection of oil in incorrect containers. Contractor shall decline collection of contaminated used motor oil or any other fluids that have been set out for collection.
- d. Used motor oil filters are required to be placed in a Contractor-provided container and placed next to the recycling container. Contractor may decline collection of oil filters in incorrect containers.

4.3.3 Collection Time and Location. Collection from Single Family Dwellings shall occur between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, regardless of weather conditions and on the same day as when Solid Waste is collected by the City's exclusive franchised Solid Waste collector. The Director may authorize an extension of hours on a route-by-route basis.

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

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

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

Contractor is authorized to decline collection of Targeted Recyclable Materials mixed with Solid Waste, Hazardous Waste, or not prepared in accordance with Program requirements. If Contractor declines collection, Contractor shall affix a note to or place a note within the recycling container

explaining why collection service was declined. Setouts improperly prepared shall be cleaned-up and taken by the driver the first time, with Program literature left behind which references the specific problem. Contractor's drivers shall reject setouts from Single Family Dwellings that continue to improperly prepare setouts. Rejected setouts shall be tagged with a brightly colored tag visible to the resident and anyone viewing the setout. Contractor's drivers shall report the address and reason(s) for rejection to Contractor's dispatcher and customer service representative by two-way radio. At the end of the business day, Contractor shall mail an explanation of the setout rejection and Program literature to the resident. Should the resident call Contractor's office before the end of the business day, a record of the rejection should be on file. Contractor's customer service staff shall explain the problem from an informed perspective, and, where necessary and practical, make the concession of having the driver return to get a setout that the resident has properly prepared.

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

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

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

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

4.3.6 Replacement of Recycling Containers. In the event recycling containers are lost, stolen, damaged or destroyed, Contractor shall be responsible to provide replacement containers within one week of request by customer or City. Contractor shall be solely responsible for the purchase and distribution of replacement containers. During the Service Term of the Agreement, Contractor shall be responsible for providing annual replacement containers totaling one and one-half percent (1.5%) of the number of Single Family Dwellings serviced.

Should the City elect to extend the Agreement pursuant to Section 3.2, Contractor shall be responsible for providing additional replacement containers totaling one and one-half percent (1.5%) of the number of Single Family Dwellings serviced on an annualized basis. If the City elects to extend the Agreement for less than twelve months, said amount of replacement containers shall be pro-rated. The quantity of replacement containers owed to the City shall be cumulative from year to year. Upon expiration of the Agreement, the City relinquishes any claim it may have for reimbursement from Contractor for any unused replacement containers.

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

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

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

4.4 Multi-Family Dwelling Collection and Service Requirements

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

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

4.4.2 Material Preparation Requirements.

- a. Multi-Family Dwellings will be required to place commingled Targeted Recyclable Materials in a recycling container provided by Contractor.
- b. Corrugated cardboard is required to be flattened and no larger than 3' by 3' and be set out (1) stacked or bundled next to a recycling container, (2)

or in the recycling container provided by Contractor. Contractor is obligated to collect all corrugated cardboard meeting the dimensional requirements that is set out for collection.

- c. Used motor oil is required to be placed in a Contractor provided container and placed next to the recycling container. Contractor may decline collection of oil in incorrect containers. Contractor shall decline collection of contaminated used motor oil or any other fluids that have been set-out for collection. Contractor may decline collection of spilled oil within the property confines and shall notify the building owner/manager of the reason why collection service was declined.
- d. Used motor oil filters are required to be placed in a Contractor provided container and placed next to the recycling container. Contractor may decline collection of oil filters in incorrect containers.

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

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

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

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

owner/manager call Contractor's office before the end of the business day, a record of the rejection should be on file. Contractor's customer service staff shall explain the problem from an informed perspective, and, where necessary and practical, make the concession of having the driver return to get a setout that the building owner/manager has properly prepared.

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

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

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

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

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

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

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

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

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

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

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

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

- a. Arrange with and obtain approval from building owner/manager for establishment of service at an agreed-upon collection location. Contractor shall inform the building owner/manager that the default service location is on-premises collection at no additional cost.
- b. Arrange with and obtain approval from building owner/manager for delivery of a specified number of recycling containers. Collection service shall be provided within two weeks of Program acceptance by the building owner/manager.
- c. Confirm receipt by Customer of recycling containers.

- d. Concurrent with delivery of the recycling containers, Contractor shall deliver City-approved Program information, including but not limited to printed materials.

4.4.8.2 Removing Multi-Family Dwellings. In the event it is determined through collection service audits or other means that Contractor is not providing Multi-Family Collection Service to a Multi-Family Dwelling, then upon notice from the City, Contractor shall remove the Multi-Family Dwelling from its multi-family billing/service list for the next monthly billing period. The Multi-Family Dwelling can only be reinstated to active billing/service status after Multi-Family Collection Service has been re-established, per the requirements of Section 4.4.8.1.

4.5 City Facility Collection and Service Requirements.

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

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

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

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

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

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

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

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

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

4.6 Small Business Collection and Service Requirements.

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

4.6.2 Small Business Material Preparation Requirements.

- a. Small Businesses will be required to place commingled Targeted Recyclable Materials in a clear plastic 40 gallon bag or a recycling container(s) provided by Contractor.

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

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

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

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

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

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

4.6.5 Small Business Recycling Containers. For the purpose of providing service to subscribing Small Businesses, Contractor will use as the “recycling container” a clear plastic bag of sufficient capacity to line a 40-gallon container. Alternatively, the Small Business may choose to receive collection service in 18 gallon recycling bins or 64 or 96 gallon carts similar to containers used for Single Family Dwellings and/or Multi-Family Dwellings. In such case, the Small Business must use Contractor-owned containers for an additional charge. All carts shall be clearly marked “Recycling Only”. Contractor may provide carts with a locking mechanism to prevent the theft of Targeted Recyclable Materials or filling with Solid Waste. Contractor shall be solely responsible for purchase and distribution of new recycling containers. Style, color, size, manufacturer, and copy to be printed or embossed on the containers shall be subject to approval by the City. All newly subscribing Small Businesses shall be provided recycling containers and collection service within one week of the service request or the next scheduled service day, whichever is later, during the duration of the Program.

4.6.6 Replacement of Recycling Containers. In the event recycling containers are lost, stolen, damaged or destroyed, Contractor shall be responsible for providing replacement containers within one week of the request by the Small Business or the City. Contractor shall be solely responsible for the purchase and distribution of replacement containers. During the Service Term of this Agreement, Contractor shall be responsible for providing one replacement container per calendar year per Small Business for the subscribed level of service. Should the City elect to extend the Agreement pursuant to Section 3.2 for less than twelve months, 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.

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

Small Businesses receiving 18 gallon recycling bin or 64 or 96 gallon cart service shall pay the rate(s) set forth in Attachment F; the City is not responsible

for such payment. The per month rate(s) includes the collection service, delivery and rental of the recycling container used for the service described in Section 4.6.2.

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

Rates shall be paid directly to Contractor by the Small Business, property owner, or their agent. Contractor shall establish regular billing protocol, subject to the City's approval. The City may, at its option, subsidize the Small Business rates. Adjustments to the Small Business rates shall be made in a manner similar to that described in Section 12.3, and an increase to the Small Business rates shall not be for a percentage amount greater than that established for the Household Rate as determined in Section 12.3.

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

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

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

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

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

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

4.7 Changes in Scope of Work.

4.7.1 General. The City may direct changes in the scope of work, including the addition of new services and programs, the deletion of existing services, and the modification of the manner in which existing services are performed or provided. Contractor shall promptly and cooperatively comply with such directions and the Household Rate shall be adjusted to fairly and fully reflect the additional cost, or cost reduction, associated with the directed change in scope of services. The City's authority to delete existing services is not in derogation of Contractor's rights. If a service within the scope of the Agreement is discontinued at the City's direction pursuant to this section, the City shall not allow a third party to perform said services. If the City deletes services, it will take into account when adjusting the Household Rate not only Contractor's reduced operating costs, but also the impact of capital equipment no longer fully utilized. Contractor must provide financial information showing the impact of service changes on capital equipment.

4.7.2 New Programs. Pilot programs and innovative services that may entail new collection methods or additional Targeted Recyclable Materials are included among the kinds of changes the City may direct. Before directing a

change in service that would affect Contractor's costs by more than \$25,000 per year, the City will request Contractor to evaluate and report on the change being considered. Within ninety (90) days of receiving such a request, Contractor shall provide a report to the City on the change, including (i) description of collection methodology to be employed; (ii) equipment to be utilized, including the number and type of vehicles required and the number required to be purchased, if any; (iii) labor requirements (number of employees by classification); (iv) requirements for program publicity, customer education, etc., if any; (v) evaluation of financial implications of the program, including a 5-year projection of costs, revenues and effect on the Household Rate, showing the assumptions used and explaining the basis for such assumptions; (vi) advantages and disadvantages of the change; and (vii) a recommendation as to whether the change should be implemented and, if so, an implementation schedule. Contractor will meet with the City to present its report.

4.7.3 Implementing Changes in Service. If a change in service will affect Contractor's costs by less than \$25,000 per year, Contractor shall implement the change in accordance with a schedule directed by the City and the Household Rate shall be adjusted accordingly. If a change in service will affect Contractor's costs by more than \$25,000 per year, the City will consider Contractor's report as provided under Section 4.7.2. If the parties agree on the appropriate amount by which the Household Rate should be adjusted, Contractor shall implement the change in accordance with the schedule directed by City.

4.7.4 New Technology. In the event that technological advancements in the collection, transportation, and Processing of Targeted Recyclable Materials are made, and which if implemented alone or in conjunction with another technology would cumulatively reduce the existing cost to Contractor for providing services or reduce the initial Household Rate established by this Agreement by approximately ten percent (10%) or more, Contractor shall so notify the City, and the City may require Contractor to utilize or implement said new technology and a new Household Rate shall be mutually agreed upon and established. Contractor shall retain the ability to propose changes to the City for the Program for the purpose of maximizing efficiency. Said changes will not be implemented without the written approval of the City.

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

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

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

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

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

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

Claimants agree and represent that it fully understands the statutory language of Civil Code Section 1542 and with this understanding, nevertheless, elects to and does 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 _____

ARTICLE 5.00 -- HAZARDOUS WASTE

5.1 Hazardous Waste.

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

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

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

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

5.2 Remediation of Spills. Contractor shall be solely responsible for any contamination existing at its facilities before or after the date of this Agreement. No cost

incurred as a result of such contamination shall be recoverable under this Agreement nor in separate administrative or judicial forums. Contractor shall diligently and regularly inspect its properties for Hazardous Waste and shall immediately remove and remediate any Hazardous Waste that it knows has been spilled or deposited at any location during the course of its operations. Contractor shall be responsible for remediation of its facilities and other locations impacted by spills or releases and the cost of remediation incurred as a consequence of such spills or releases shall not be recoverable under this Agreement. Nothing in this Section prohibits Contractor from making every reasonable effort to recover its special handling and disposal costs from third party generators. Contractor acknowledges and agrees that this Agreement does not provide the City, its agents, officers or employees with any control whatsoever over Contractor's compliance with environmental laws and regulations.

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

ARTICLE 6.00 -- PROGRAM EQUIPMENT

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

6.1 Collection Vehicle Specifications, Maintenance and Appearance. Equipment shall be of the highest quality in order to produce the quality of work required. Suitability shall be determined by the Director. The Director shall have the right, but not the obligation, to inspect Contractor's equipment and maintenance records at any time with 24 hours notice; if found lacking, the equipment shall be removed from the Program until defects are remedied. Contractor shall be responsible for providing replacement equipment at no extra cost to the City while defects are remedied. Any equipment more than one (1) year old at the Effective Date of this Agreement shall not be used for collection. No vehicle older than the 2003 model year shall be used for collection from Single-Family, Multi-Family, City Facilities or Small Businesses during the Service Term or Extended Term, however, if Contractor establishes separate collection routes for Multi-Family Dwellings, no vehicle older than the 2004 model year shall be used for collection on said routes. A collection vehicle used principally for back-up purposes shall not be more than five (5) years old at the Effective Date of this Agreement. Contractor and all applicable subcontractors shall maintain a maintenance

log for each piece of equipment and shall make such log available for City inspection upon request.

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

Contractor's name, phone number and vehicle number shall be visibly displayed on its vehicles, in letters and figures at least four (4) inches high. The vehicle number shall be displayed on both the front and rear of the vehicle. Vehicles color(s) and paint schemes are subject to the approval of the Director. The City's Program logo shall be prominently displayed of a size and type style to be approved by the Director. Vehicles shall be painted frequently enough to maintain a positive image as determined by the City, or at least once every five (5) years. In the event Contractor must use other collection vehicles on a temporary basis for the services to be performed under this Agreement, Contractor must affix temporary signage to show the City's Program logo and Contractor's customer service telephone number.

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

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

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

6.4 Collection Vehicle Global Positioning System. Contractor shall provide and maintain at its expense global positioning equipment on all collection vehicles during the Service Term and any Extended Term. Suitability of said equipment shall be determined by the Director and shall be of a quality to provide reports indicating the time

and location of all vehicles while on the route. The global positioning system selected by Contractor shall be web-based and the City shall be provided a password to access the system to obtain information to respond to customer inquiries. The City shall not utilize its access to Contractor's global positioning system to obtain information to punitively, arbitrarily or unreasonably assess liquidated damages. Contractor shall include City staff in training classes offered by the company providing the global positioning system.

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

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

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

ARTICLE 7.00 -- PROCESSING REQUIREMENTS

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

7.1 Processing Facility Location and Permits. Contractor shall be responsible to acquire all necessary permits and environmental review and clearance for any and all Processing facilities used to fulfill the obligations of this Agreement. This Agreement does not authorize or waive any permit requirements. Contractor currently operates two processing facilities located in Oakland. Contractor shall continue to

process all Program materials at its Oakland facilities throughout the Agreement term. Should Contractor desire to process collected Recyclables at a facility outside of Oakland, Contractor shall make such request in writing and must receive written approval from the City.

7.1.1 Processing Facility's Relationship to Neighborhood. To the extent Contractor uses facilities located in Oakland for the storage of vehicles and the Processing of the Recyclables collected pursuant to this Agreement, Contractor shall comply with Attachment G.

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

7.3 Processing Residue. If Contractor's Processing facility is located within the Oakland City limits, all Processing Residue generated from the Processing of Targeted Recyclable Materials collected through this Program shall be handled and disposed of in accordance with the Oakland Municipal Code, Sections 8.28, 8.28.060, 8.28.070, and 8.28.100, and with Contractor's Conditional Use Permits. Contractor is responsible for all costs associated with this requirement.

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

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

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

The City reserves the right to terminate this Agreement if it is found that Targeted Recyclable Materials, excluding Processing Residue, are intentionally disposed of by Contractor or its designee without prior written approval from the City.