

CONTRACTS SCAN SHEET

CONTRACT NUMBER: 9525

CONTRACT TYPE: SERVICES

DEPARTMENT: PUBLIC WORKS
Department initiating contract

CONTRACT DATE: 09/01/2016
As stated in the Terms sections of contract

EXPIRATION DATE:
As stated in the Terms sections of contract

MEETING DATE: 07/12/2016
Date of meeting where contract was approved

ITEM NUMBER: 2.6
Item number of meeting where contract was approved

CONTRACT AMOUNT:
As stated in Budget section of contract

CONTRACT NAME: WASTE MANAGEMENT
COLLECTION & RECYCLING, INC.
As stated in first paragraph of contract DBA WASTE MANAGEMENT OF
ORANGE COUNTY

CONTRACT SUBJECT: TO PROVIDE AN EXCLUSIVE
As stated in Description of Services section of contract FRANCHISE FOR SOLID WASTE
HANDLING SERVICES

ORIGINAL

AGREEMENT

BETWEEN

CITY OF IRVINE

AND

WASTE MANAGEMENT COLLECTION & RECYCLING, INC. DBA WASTE
MANAGEMENT OF ORANGE COUNTY

FOR

SOLID WASTE HANDLING SERVICES

EFFECTIVE SEPTEMBER 1, 2016

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AGREEMENT

This Agreement (“Agreement”) is entered into to be effective as of September 1, 2016, by and between the CITY OF IRVINE, a California municipal corporation (“City”), and WASTE MANAGEMENT COLLECTION & RECYCLING, INC., a California corporation, dba Waste Management of Orange County (“Contractor”) to provide an exclusive franchise for Solid Waste Handling Services from Residential Premises and Village Commercial Premises within the City. City and Contractor are referred to collectively as the “Parties” and individually as a “Party.”

RECITALS:

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (“AB 939”), has declared that it is in the public interest to authorize and require local agencies to make adequate provision for the disposal of all Solid Waste within their jurisdictions.

B. Pursuant to California Public Resources Code Section 40059(a)(1), the City Council of the City has determined that the public health, safety and welfare require that an exclusive franchise agreement be awarded to a qualified solid waste enterprise for Solid Waste Handling Services for Residential Premises and Village Commercial Premises within the City Limits.

C. City previously entered into a franchise agreement for certain Solid Waste Handling Services with Waste Management of Orange County, Inc. dated July 1, 1997 (the “Original Agreement”). The Original Agreement was amended three times in amendments dated March 9, 1999, September 11, 2001, and August 22, 2006 (“Agreement Amendments”). The Original Agreement and Agreement Amendments are collectively referred to herein as the “Prior Agreements.”

D. It is the intent of the Parties to update the Prior Agreements to reflect the service standards and requirements in the Solid Waste industry which have changed over time and that this Agreement shall supersede the Prior Agreements, except with respect to certain continuing obligations as more specifically set forth herein.

E. It is the intent of the Parties that Contractor, and not the City, shall be solely responsible for establishing and collecting all charges for Solid Waste Handling Services provided by Contractor pursuant to this Agreement, subject to maximum rates for services which have been agreed upon as part of the consideration for the City’s grant of the exclusive franchise rights set forth herein.

F. City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, Recycling, and disposal of Solid Waste, including AB 939, AB 341, AB 1594, AB 1896, the Resource Conservation and Recovery Act (“RCRA”), and the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). City and Contractor desire to leave no doubts as to their respective roles, and to memorialize that by entering into this Agreement City is not thereby becoming an “arranger” or a “generator” as those terms are used in CERCLA, and that it is Contractor, not City, who is “arranging for” the collection, transport for disposal, composting, and Recycling of municipal Solid Waste in the

City which may contain Hazardous Substances. City and Contractor understand and agree that it is Contractor, and not City, who will arrange to collect Solid Waste, that City has not, and, by this Agreement does not, instruct Contractor on its Collection methods, nor supervise the Collection process, nor do the Parties intend to place title to such Solid Waste in City, but rather intend that whatever, if any, title in and to such Solid Waste that otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Contractor, and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. By entering this Agreement, City and Contractor further desire to confirm that Contractor has agreed to indemnify the City in connection with any claims relating to the inadvertent or intentional collection, transportation and/or disposal by Contractor of Hazardous Contaminants that may occur in connection with Contractor's performance under this Agreement in accordance with the terms and conditions set forth herein.

G. Contractor has agreed, as part of this Agreement, to provide such services as are necessary or desirable to ensure, subject to the terms of the first paragraph of Section 8.5.3.4 herein, that City complies, within the Franchise Area, with the requirements of all applicable laws and regulations including specifically, without limitation, AB 939, AB 341, and Public Resources Code Section 40000, et seq.

H. City desires, among other things, to ensure adequate landfills remain available to meet the public's need for the safe handling and disposal of Solid Waste, and further desires to ensure its citizens do not incur undue costs in safely disposing of Solid Waste they generate, and has thus entered into the County Agreement. Contractor has agreed, as part of this Agreement, to provide such services and take such actions as are necessary or desirable to ensure City complies with its obligations pursuant to the County Agreement.

COVENANTS:

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, City and Contractor hereby agree as follows:

SECTION 1. RECITALS

The Parties acknowledge the above recitals are true and correct and incorporate them herein as if they were fully restated.

SECTION 2. DEFINITIONS

Whenever any term used in this Agreement has been defined by the California Public Resources Code, the definition of such term set forth therein shall apply unless the term is otherwise defined in this Agreement.

2.1 AB 341

“AB 341” shall mean Assembly Bill 341 from the 2011-2012 Regular Session of the California Legislature (Chapter 476, Statutes 2011).

2.2 AB 939

“AB 939” shall mean the California Integrated Waste Management Act of 1989, currently codified as California Public Resources Code Section 40000 et seq., as it may be amended from time to time.

2.3 AB 1594

“AB 1594” shall mean Assembly Bill 1594 from the 2013-2014 Regular Session of the California Legislature (Chapter 719, Statutes 2014).

2.4 AB 1826

“AB 1826” shall mean Assembly Bill 1826 from the 2013-2014 Regular Session of the California Legislature (Chapter 727, Statutes 2014).

2.5 Affiliate

“Affiliate” shall mean a business in which Contractor owns a direct or indirect ownership interest, a business (including corporations, limited and general partnerships and sole proprietorships) which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

2.6 Animal Waste

“Animal Waste” shall mean animal carcasses, dead animals, and/or parts or portions of dead animals. Animal Waste shall not include manure.

2.7 Applicable Laws

“Applicable Laws” shall mean all federal, state, county, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over an aspect of this Agreement that are in force on the Effective Date, and as may be enacted, issued or amended thereafter, including without limitation City’s Municipal Code, AB 341, AB 939, AB 1594, and AB 1826.

2.8 Billings

“Billings” or “Billing” or “Bill” shall mean the statements of charges provided to Customers for services rendered by Contractor pursuant to the terms of this Agreement.

2.9 Bins

“Bins” shall mean a Container, including dumpsters, compactors, and any similar such devices with a capacity of between approximately one and one-half (1½) and eight (8) cubic yards.

2.10 Bulky Items

“Bulky Items” shall mean Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with and without Freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); residential wastes (including wood waste, tree branches, scrap wood, in the aggregate not exceeding one cubic yard per Collection); and clothing. For purposes of this Agreement, and notwithstanding any provision hereof to the contrary, Bulky Items shall specifically include batteries, and items commonly known in the waste industry as “brown goods,” “e-waste” and “universal waste” (including, without limitation all types of electronic waste, stereos, televisions, computers and monitors, cellular phones, VCRs, microwaves and other similar type of equipment and products). Bulky Items do not include car bodies, Construction and Demolition (C&D) Debris or (with the exception of appliances/white goods described above) items that cannot reasonably and safely be loaded and unloaded into a vehicle by two people using equipment of the type which, pursuant to industry standards, would normally be carried in a vehicle used in Collecting Bulky Items. In the event a question arises as to whether a specific item, or category of items meets the definition of Bulky Items, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

2.11 CalRecycle

“CalRecycle” shall mean the State of California Department of Resources Recycling and Recovery, the department within the State Natural Resources Agency responsible for the administration of the Integrated Waste Management Act of 1989, California Public Resources Code Section 40000 et seq. (“Act”), or any successor department or agency created or designated for such purpose pursuant to the Act.

2.12 Cart

“Cart” shall mean a plastic Container with a capacity of between approximately thirty-five (35) to ninety-six (96) gallons, having a hinged lid and wheels and serviced by an automated or semi-automated process, as opposed to a manual process of lifting and dumping.

2.13 City

“City” shall mean the City of Irvine, a municipal corporation, located in Orange County, California.

2.14 City Council

“City Council” shall mean the City Council of City.

2.15 City Indemnitees

“City Indemnitees” shall mean the City and its past and present elected and appointed officials, officers, commissions, boards, members, employees, representatives, agents, consultants, and volunteers.

2.16 City Limits

“City Limits” shall mean the territorial boundaries of the City together with all amendments and changes thereto, which boundaries are depicted on maps, incorporated herein by reference, that are kept on file in the office of the City Clerk of the City of Irvine, and which are from time to time amended to reflect changes.

2.17 City Manager

“City Manager” shall mean the City Manager of the City of Irvine or his or her designee.

2.18 Collect/Collection

“Collect” or “Collection” shall mean to take physical possession of, transport, and remove (i) Solid Waste from a Premises, (ii) Solid Waste from Litter Modules, (iii) holiday trees from the Sunset Transfer Station or from the City Yard, or (iv) any other materials that do not otherwise constitute Solid Waste, but that are discarded by a Customer pursuant to a special program pursuant to this Agreement, including, without limitation, the Curbside Grease Collection Program (if implemented), Curbside Food Waste Collection Program (if implemented), Sharps Collection Program, Non-Controlled Medication Collection Program, Door-to Door HHW Collection Program, and Curbside HHW Program (if implemented).

2.19 Collection Vehicle

“Collection Vehicle” shall have the meaning ascribed in Section 9.1 of this Agreement.

2.20 Commercial Premises

“Commercial Premises” shall mean property upon which a business activity is conducted, including but not limited to retail sales, services, manufacturing, assembling, storage, or wholesale operations, but excluding businesses conducted upon residential premises that are permitted under applicable zoning regulations and that do not constitute the primary use of the property. Commercial Premises include hotels, motels, assisted living facilities, convalescent centers and nursing homes.

2.21 Construction and Demolition (C&D) Debris

“Construction and Demolition (C&D) Debris” shall mean Solid Waste generated, produced, or discarded in connection with construction, demolition, landscaping, land clearing, or general clean-up activities within the City, including, but not limited to, concrete, plaster, drywall, green waste, wood, wood scraps, dirt, rock and rubble, without regard to whether such materials are Recycled.

2.22 Container

“Container” shall mean any and all types of Solid Waste receptacles, including Carts, Bins and Rolloff Boxes.

2.23 Contractor

“Contractor” shall mean Waste Management Collection & Recycling, Inc., a California corporation, dba Waste Management of Orange County, or any Party pursuant to the terms hereof permitted to become the successor or assignee thereof.

2.24 County Agreement

“County Agreement” shall mean that certain Waste Disposal Agreement, as the same may be amended from time to time, entered into among various Orange County cities, including specifically the City of Irvine, and the County of Orange relating to the use of County landfills for the disposal of Solid Waste Collected in such cities, and which is on file in the office of City’s City Clerk.

2.25 Curbside Grease Collection Program

“Curbside Grease Collection Program” shall have the meaning ascribed in Section 8.2.7 of this Agreement.

2.26 Curbside Food Waste Collection Program

“Curbside Food Waste Collection shall have the meaning ascribed in Section 8.2.8 of this Agreement.

2.27 Curbside HHW Program

“Curbside HHW Program” shall have the meaning ascribed in Section 8.2.19 of this Agreement.

2.28 Customer

“Customer” or “Customers” shall mean any person receiving Solid Waste Handling Services from Contractor within the Franchise Area.

2.29 Door-to Door HHW Collection Program

“Door-to-Door HHW Collection Program” shall have the meaning ascribed in Section 8.2.5 of this Agreement.

2.30 Dwelling Unit

“Dwelling Unit” shall mean one or more rooms designed for occupancy by one family for living and sleeping purposes and containing kitchen facilities or an area designed for the preparation of food for use solely by one family.

2.31 Effective Date

“Effective Date” shall mean September 1, 2016.

2.32 Environmental Laws

“Environmental Laws” shall mean all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Federal Clean Air Act, 42 USC §7401 et seq.; the Toxic Substances Control Act, 15 USC §2601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

2.33 Food Waste

“Food Waste” shall mean compostable Organic materials, excluding Green Waste, including but not limited to: (i) all food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells); (ii) food-soiled compostable paper (including napkins, paper towels, paper plates); and (iii) tea bags, coffee grounds and filters.

2.34 Franchise Area

“Franchise Area” shall mean all Residential Premises and Village Commercial Premises within the City Limits, including Residential Premises and Village Commercial Premises which may be annexed and thereby added to the City Limits following the Effective Date.

2.35 Franchise Fee

“Franchise Fee” shall mean the franchise fee set forth and more fully defined in Section 11.3 hereof.

2.36 Green Waste

“Green Waste” shall mean any plant material that is kept separate from other Solid Waste at the point of generation and contains no greater than one percent (1%) of physical contaminants by weight. Green waste includes, but is not limited to, yard trimmings, untreated wood wastes, natural fiber products, and Construction and Demolition (C&D) Debris wood waste. Green material does not include food waste, biosolids, plant material mixed with Solid Waste, material processed from commingled waste, wood containing lead-based paint or wood preservative, or mixed Construction and Demolition (C&D) Debris.

2.37 Gross Receipts

“Gross Receipts” shall mean and include all monies, fees, charges, consideration, and revenue received by Contractor, in connection with, arising from, or in any way attributable to the Solid Waste Handling Services carried out by or on behalf of Contractor pursuant to this Agreement. Gross Receipts includes, without limitation, (i) monthly or quarterly Customer charges that are received by Contractor for Collection of Solid Waste, without subtracting Franchise Fees, and (ii) fees imposed and collected pursuant to this Agreement, including fees collected from Customers for transportation charges. Gross Receipts does not include (i) revenue from the sale of Recyclable Material, Green Waste, Food Waste, and other material that is diverted from disposal, or (ii) monies collected by Contractor and used to pay tipping fees imposed by the County of Orange for disposal at a County landfill pursuant to the County Agreement.

2.38 Hazardous Contaminant

“Hazardous Contaminant” shall mean any “hazardous material,” as that term is defined under California Health & Safety Code Section 25501(n); any “hazardous substance,” as that term is defined herein or under California Health & Safety Code Sections 25281(h), 25501(n), and under Title 42, Section 9601(14) of the United States Code; any “hazardous waste,” as that term is defined herein and under Title 42, Section 6903(5) of the United States Code and under California Health & Safety Code Section 25501(n); any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term “Hazardous Contaminant” shall also include any and all amendments to the above-referenced statutory and regulatory provisions made before or after the date of execution of this Agreement.

2.39 Hazardous Substance

“Hazardous Substance” shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as “Hazardous Substances,” “hazardous materials,” “Hazardous Wastes,” “toxic waste,” or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.(CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v)

California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7401 et seq.; and (vii) the California Water Code §13050; (b) any substances identified in any and all amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified and/or regulated as hazardous or toxic under any other applicable federal, state or local laws or regulations, including any of the Environmental Laws, currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

2.40 Hazardous Waste

"Hazardous Waste" shall mean all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

2.41 HHWE

"HHWE" shall mean the Household Hazardous Wastes Element of the City's General Plan.

2.42 Holiday

"Holiday" shall mean the following National holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day.

2.43 Household Hazardous Waste

"Household Hazardous Waste" shall have the meaning set forth in California Health and Safety Code section 25218.1(f).

2.44 Mixed-Use Development

"Mixed-Use Development" shall mean Premises where Bins are shared by Customers from both Commercial Premises and Multi-Family Dwellings. For purposes of this Agreement, all Mixed-Use Developments within the City Limits will be considered as Village Commercial Premises.

2.45 Multi-Family Dwelling

"Multi-Family Dwelling" shall mean any building or lot containing more than one Dwelling Unit at which Contractor determines (and City agrees) the Dwelling Units should receive Solid Waste Handling Services through the use of shared Bins, since Customers at such premises are not reasonably able to store Carts or otherwise receive individualized Solid Waste Handling Services through the use of the automated Collection system utilizing Carts, as contemplated by this Agreement for Single Family Dwellings. Unless otherwise determined as

set forth above, any Premises upon which four (4) or more Dwelling Units exists shall be deemed to be a Multi-Family Dwelling. Any ambiguity as to whether a Customer's Premises qualifies for purposes of this Agreement as a Single Family Dwelling or Multi-Family Dwelling shall be resolved by the City Manager whose decision shall be final.

2.46 Multi-Family Dwelling Customers

"Multi-Family Dwelling Customers" shall mean all Customers at Multi-Family Dwellings, including Multi-Family Dwellings located in Mixed-Use Developments.

2.47 Municipal Code

"Municipal Code" shall mean City's Municipal Code of Ordinances and all uncodified ordinances duly adopted by City, as such may be amended from time to time.

2.48 Non-Controlled Medication Collection Program

"Non-Controlled Medication Collection Program" shall have the meaning ascribed in Section 8.2.18 of this Agreement.

2.49 Non-Exclusive Franchise Agreements

"Non-Exclusive Franchise Agreements" shall mean those certain agreements executed by and between the City and various third party franchisees for the Collection, transfer, transport, Recycling, processing, and disposal of Solid Waste for Commercial Premises located outside of the Franchise Area. The term of each of the Non-Exclusive Franchise Agreements is currently scheduled to expire on June 30, 2017, and the Parties anticipate that the Non-Exclusive Franchise Agreements will be renewed, extended, re-entered, or otherwise re-negotiated such that substantially similar agreements to the Non-Exclusive Franchise Agreements, which agreements are consistent with the terms hereof, will be in place during the Term hereof.

2.50 NPDES

"NPDES" shall mean the National Pollutant Discharge Elimination System.

2.51 OC Franchise City With Commercial Bin Service/OC Franchise Cities With Commercial Bin Service

"OC Franchise City With Commercial Bin Service" shall mean a city in Orange County, California with an exclusive franchise for commercial services, and "OC Franchise Cities With Commercial Bin Service" shall mean two (2) or more cities in Orange County, California with exclusive franchises for commercial services.

2.52 Organics

"Organics" shall mean Food Waste and Green Waste.

2.53 Person

“Person” shall mean any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Orange, towns, cities, and special purpose districts.

2.54 Premises

“Premises” shall mean any land, building, and/or structure within the City Limits where Solid Waste is generated or accumulated.

2.55 Prior Agreements

“Prior Agreements” shall have the meaning ascribed in Recital C of this Agreement.

2.56 Recycle or Recycling

“Recycle” or “Recycling” shall mean the process of Collecting, sorting, cleaning, treating and reconstituting materials that would otherwise be disposed of and returning these materials to the economic mainstream in the form of raw materials for new, reused or reconstituted products.

2.57 Recyclable Material

“Recyclable Material” or “Recyclables” shall mean that Solid Waste discarded within the Franchise Area which is capable of being Recycled.

2.58 Recycling Cart

“Recycling Cart” shall mean a Cart designated for the Collection of Recyclable Material.

2.59 Refuse Cart

“Refuse Cart” shall mean a cart designated for the Collection of Solid Waste.

2.60 Residential Premises

“Residential Premises” shall mean all Premises upon which Dwelling Units exist. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement, Mixed-Use Developments shall be deemed to be Village Commercial Premises.

2.61 Rolloff Box

“Rolloff Box” shall mean Solid Waste Collection Containers of ten (10) yards or larger, including compactors.

2.62 Senior Citizen

“Senior Citizen” shall mean a Customer that is the head of the household at a Single Family Dwelling as demonstrated by utility bills, a lease, or other reasonable documentation, at least sixty-five (65) years of age and the recipient of supplemental social security benefits.

2.63 Sharps Collection Program

“Sharps Collection Program” shall have the meaning ascribed in Section 8.2.17 of this Agreement.

2.64 Single Family Dwelling

“Single Family Dwelling” shall mean a building or lot containing one Dwelling Unit, and for purposes of this Agreement includes buildings and lots with more than one Dwelling Unit where such Dwelling Units are determined by the City to be reasonably able to receive individualized Solid Waste Handling Service by the automated process utilizing Carts contemplated herein. Any ambiguity as to whether a Customer’s Premises qualifies as a Single Family Dwelling or Multi-Family Dwelling shall be resolved by the City Manager whose decision shall be final.

2.65 Single Family Dwelling Customers

“Single Family Dwelling Customers” shall mean all Customers at Single Family Dwellings.

2.66 Solid Waste

“Solid Waste” shall mean and include all discarded putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, construction waste, industrial waste, commercial Solid Waste, Bulky Items, and any other discarded solid, semisolid, and liquid waste permitted to be disposed of at a Class III landfill and which are included within the definition of “Nonhazardous Solid Waste” set forth in the California Code of Regulations, as it may be amended from time to time. Solid Waste does not include Hazardous Contaminants, Hazardous Substances, Hazardous Waste, low-level radioactive waste, untreated medical waste, or Special Wastes.

2.67 Solid Waste Handling Services

“Solid Waste Handling Services” shall mean the Collection, and thereafter the transfer, transport, Recycling, processing, and disposal of Solid Waste for Premises within the Franchise Area.

2.68 Special Wastes

“Special Wastes” shall mean waste materials including sewage, sludge, industrial sludge, asbestos, auto bodies, tires, used motor oil, Animal Waste, explosive substances, radioactive materials, and other materials which may not be disposed of at a Class III landfill or which require special handling.

2.69 SRRE

“SRRE” shall mean the Source Reduction and Recycling Element of the City’s General Plan.

2.70 Temporary Service

“Temporary Service” shall mean the Collection, transfer, transport, Recycling, processing, and disposal of Solid Waste provided by a solid waste enterprise on an as-needed and temporary basis to any Premises within the City in conjunction with construction, demolition, cleanup or other projects, and by use of temporarily placed Bins or Rolloff Boxes.

2.71 Term

“Term” shall have the meaning ascribed in Section 6 of this Agreement.

2.72 Transformation

“Transformation” shall mean incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. “Transformation” does not include composting.

2.73 Village Commercial Customers

“Village Commercial Customers” shall mean all Customers at Village Commercial Premises other than Multi-Family Dwelling Customers.

2.74 Village Commercial Premises

“Village Commercial Premises” shall mean any Premises so designated by City as of the Effective Date, and any Premises so designated by the City Manager thereafter. The Village Commercial Premises designation is intended to apply to Premises located in close proximity to residential areas established to provide for the unified commercial needs of neighborhood residents. Said designation shall include all Mixed-Use Developments, notwithstanding any provision in this Agreement or in the Municipal Code to the contrary, and is anticipated to include (although may not include) all areas zoned Neighborhood Commercial and Community Commercial and which are adjacent to or proximate to residential areas as determined by the City Manager. City shall notify Contractor whenever a Premises is added to the Village Commercial Premises designation. Unless otherwise agreed by the Parties, once designated as a Village Commercial Premises, a Premises shall remain so designated for the remainder of the Term hereof.

2.75 Village Commercial Premises Map

“Village Commercial Premises Map” shall mean the map attached hereto as Exhibit D, which depicts, as of the Effective Date, all Premises designated as Village Commercial Premises. The Village Commercial Premises Map shall be amended from time to time to reflect additional Premises which may be added to the Village Commercial Premises designation, and amended maps shall be maintained by the City Manager. Notwithstanding the foregoing, or anything in this Agreement to the contrary, at such time as City renews any of the existing Non-Exclusive

Franchise Agreements which are scheduled to expire on June 30, 2017, or enters into new non-exclusive franchise agreements for the Collection, transfer, transport, Recycling, processing, and disposal of Solid Waste for Commercial Premises that are located outside of the Franchise Area (as applicable), City shall update and replace the then-current Village Commercial Premises Map. The updated, replacement Village Commercial Premises Map shall replace Exhibit D attached hereto, shall depict all land located within the City Limits, and shall indicate whether such land is designated as Village Commercial Premises. Any Premises currently designated on Exhibit D as a Village Commercial Premises shall not be otherwise designated without the consent of Contractor. The updated, replacement Village Commercial Premises Map is anticipated to identify all land area located in the City's Great Park known as "Planning Area 51", and further to divide Planning Area 51 into individual "Districts." As individual Districts within Planning Area 51 are developed and become occupied, it is anticipated that the Village Commercial Premises Map will be amended to depict whether previously undesignated Districts have become Village Commercial Premises. Further, as of the Effective Date (but subject to change in the future as the plans for Planning Area 51 develop), it is anticipated that that land currently known as Districts 1, 4, 5, 7 and 8 within Planning Area 51 will be developed primarily as Residential Premises, and accordingly City anticipates designating such Districts within Planning Area 51 as Village Commercial Premises. Moreover, City anticipates that land currently known as Districts 2, 3, and 6 within Planning Area 51 will be developed primarily as Commercial Premises, and accordingly City anticipates such Districts within Planning Area 51 will not be designated as Village Commercial Premises. The Parties acknowledge that in determining the designation of Village Commercial Premises in the future, including within the foregoing individual Districts, City's primary consideration shall be to minimize Collection Vehicle traffic in Residential Premises.

SECTION 3.

GRANT OF EXCLUSIVE FRANCHISE FOR SOLID WASTE HANDLING SERVICES FOR ALL RESIDENTIAL AND VILLAGE COMMERCIAL PREMISES.

3.1 Scope of Franchise

Except as hereinafter expressly set forth, City hereby grants to Contractor and Contractor hereby accepts from City, for the Term hereof, the exclusive contract, right, and privilege to Collect and thereafter transport, Recycle, process and dispose of, all Solid Waste (including source separated and discarded Food Waste, Green Waste, Organics, and Recyclable Material) generated or accumulated within the Franchise Area. The exclusive franchise, right and privilege granted to Contractor by this Agreement shall be interpreted to be consistent with all Applicable Laws, now in effect and adopted during the Term of this Agreement, and the scope of this Agreement shall be limited by all Applicable Laws. In the event that future interpretations of current law or future enactments limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Contractor as a result thereof.

3.2 Matters Excluded from Scope of Franchise

Notwithstanding any other provisions set forth in this Agreement to the contrary, the exclusive franchise granted herein shall exclude:

(A) The Collection, transfer, transport, Recycling, processing, and disposal of Solid Waste for Commercial Premises that are not designated as Village Commercial Premises;

(B) The Collection, transfer, transport, Recycling, processing, and disposal of Solid Waste meeting the definition of Temporary Services as defined herein;

(C) the Collection, transportation, processing, Recycling and/or disposal of any Solid Waste otherwise within the scope of this Agreement by a Self Hauler as that term is used in the Municipal Code, or any other City ordinance, resolution, regulation, or policy, as such may be adopted or amended from time to time;

(D) the sale or donation of Recyclable Material by the person or entity that generated such Recyclable Material (the "Generator") to any person or entity other than Contractor; provided, however, to the extent permitted by law, if the Generator is required to pay monetary or non-monetary consideration for the Collection, transportation, transfer, or processing of Recyclable Material to any person or entity other than Contractor, the fact that the Generator receives a reduction or discount in price (or in other terms of the consideration the Generator is required to pay) shall not be considered a sale or donation;

(E) any Solid Waste otherwise within the scope of this Agreement which is Collected or transported to a disposal or Recycling facility by City employees in the course and scope of their employment with City;

(F) except as provided otherwise herein, the Collection, transportation, or disposal of Hazardous Contaminants; Hazardous Substances; Hazardous Waste; items commonly known in the waste industry as "universal waste" and/or "e-waste"; biohazardous waste; untreated medical waste; infectious waste; Animal Waste; used cooking fats, oils, grease and similar waste; Special Waste; or other materials which do not constitute Solid Waste.

(G) the Collection, transportation, and disposal of Construction and Demolition (C&D) Debris;

(H) the Collection, transportation, and disposal of Green Waste and related Solid Waste by a gardener, or landscaper, as an incidental part of the gardening or landscaping services; and

(I) The Collection, transfer, transport, Recycling, processing, and disposal of Solid Waste provided by any Person having a legal right to continue doing so, pursuant to Public Resources Code Section 49520, et. seq., or otherwise, as long as and to the extent such legal right continues to exist; except that to the degree any territory in which Contractor has a franchise granted by another governmental entity is annexed into City during the Term, Contractor agrees the provisions of this Agreement shall apply to such territory and further acknowledges that this Agreement constitutes any notice required by the Public Resources Code in connection therewith.

3.3 Annexation, Rezoning, Or Re-designation Of Territory Covered By An Existing Franchise

3.3.1 Rights in Annexed Territories

It is the intention of the Parties that the exclusive contract, right, franchise, license and privilege granted herein shall apply to (1) any Premises incorporated into the City Limits during the Term hereof and which either at the time of incorporation or at any time thereafter is or becomes a Residential Premises, or which is or becomes designated as a Village Commercial Premises, and (2) any Premises now within the City which hereafter becomes or is hereinafter designated as a Residential Premises or Village Commercial Premises; provided, however, the right to exercise the exclusive rights granted herein within the City Limits as they now or may hereinafter exist shall be limited by any legal right for pre-existing solid waste enterprises (except as provided below) to continue to operate pursuant to an existing Solid Waste permit, license, agreement, or franchise, or otherwise, so long as any such legal right shall continue to exist. Contractor shall provide any and all services in any annexed territory or for any re-designated Premises which are required under the terms of this Agreement in the event any such services are not provided by a pre-existing contractor that continues to provide services as authorized by this paragraph.

3.3.2 Contractor's Obligations in Annexed or Rezoned/Re-designated Territories.

The parties acknowledge it is conceivable that Residential Premises and Village Commercial Premises may exist in territory that may be annexed by City, or that property within the City may be rezoned or re-designated such that it falls within the rights granted to Contractor hereunder; and further, that Contractor may have a pre-existing permit, license, agreement, franchise or other right to provide services to such properties at the time of such annexation, rezoning or re-designation, such that Contractor would have rights pursuant to Public Resources Code section 49520, et seq. Pursuant to Public Resources Code Section 49523, as part of the consideration for entering into this agreement, the Parties agree that in the event City annexes, rezones or re-designates any property during the Term hereof, and Contractor has rights pertaining to operations in such territory pursuant to Section 49520, et seq., the terms hereof shall govern Contractor's operations in the annexed or rezoned territory and shall supersede any other preexisting rights.

**SECTION 4.
ENFORCEMENT OF EXCLUSIVITY**

Contractor shall be responsible for enforcing the exclusivity of this Agreement. City shall reasonably assist Contractor in its efforts to enforce the exclusivity hereof. In addition, City shall adopt such ordinances or other regulations as it deems to be necessary or desirable to protect the exclusive rights granted herein. City shall have the right, but not the obligation, to enforce the exclusivity hereof, including by instituting appropriate legal proceedings, and/or to request that Contractor do so. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City. Contractor shall reimburse City for its reasonable legal costs, administrative costs (including staff time), or other expenses incurred in connection with City's actions to either enforce the exclusivity hereof, or to assist Contractor in doing so.

**SECTION 5.
ACCEPTANCE; WAIVER**

Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor waives Contractor's right to challenge the terms of this Agreement under federal, state, or local law, or administrative regulation. Contractor agrees that it may not provide Solid Waste Handling Services for Residential Premises or Village Commercial Premises in City under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code. Additionally, by and upon the execution of this Agreement, Contractor agrees to the termination of the Prior Agreements as of the Effective Date, agrees to waive any and all rights under the Prior Agreements, and agrees to release and hold the City harmless from any of the City's obligations thereunder (excepting, however, the right to compensation accrued and unpaid for services provided prior to the Effective Date); provided, however, nothing contained in this provision is intended to or shall relieve Contractor from any obligation existing under the Prior Agreements pertaining to insurance, indemnification, or other legal obligations to City or Customers (as opposed to obligations to provide service pursuant to the terms thereof), or from any obligation set forth in the Prior Agreements which are called out as surviving the termination thereof, and all such obligations, including specifically those indemnification obligations relating to Environmental Laws, general liability, and AB 939 shall survive the termination of the Prior Agreements.

**SECTION 6.
TERM**

The term of this Agreement (the "Term") shall be for an approximate period of ten (10) years commencing on September 1, 2016, and ending at midnight on August 31, 2026 unless this Agreement is terminated sooner pursuant to Section 18 hereof, or otherwise.

**SECTION 7.
CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

The satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by City in writing, is a condition precedent to the effectiveness of this Agreement:

7.1 Accuracy of Representation

All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true, and correct on and as of the Effective Date of this Agreement.

7.2 Absence of Litigation

There shall be no litigation pending in any court challenging the award of this Agreement to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.

7.3 Furnishing of Insurance, Bond, Letter of Credit, and Corporate Guarantee

Contractor shall have furnished evidence of the insurance and Surety required by Sections 14 and 15 hereof, and shall comply with all ongoing requirements relating thereto, and shall provide the Corporate Guarantee required by Section 31.9 hereof.

7.4 Effectiveness of City Council Action

The City Council Resolution approving this Agreement shall have become effective pursuant to California law.

7.5 Payment of Fees and Costs

Contractor shall have made payment to City of all fees, costs and other payments due as more fully set forth in Section 11.

**SECTION 8.
SOLID WASTE HANDLING SERVICES PROVIDED BY CONTRACTOR**

8.1 General

8.1.1 Equipment

Contractor shall furnish all labor, supervision, materials, supplies, and equipment necessary to provide for all Solid Waste Handling Services required by the terms of this Agreement.

8.1.2 Performance Standards

Contractor shall perform Solid Waste Handling Services as required hereunder in a workmanlike manner consistent with good housekeeping standards and all relevant provisions of Applicable Laws.

8.1.3 Noise and Disruption

Contractor shall perform Solid Waste Handling Services as required hereunder in such a manner as to minimize noise and other disruptive impacts including, without limitation, those upon traffic. Contractor shall use its best efforts to coordinate its Collection schedules such that street sweeping on any given street shall occur the business day following Collection of Solid Waste by Contractor.

8.1.4 Collection Times

Unless approved, in writing, by the City Manager, (i) Contractor shall not commence Collection of Solid Waste until 7:00 a.m., nor shall such activities occur after 8:00 p.m., and (ii) Contractor may not Collect Solid Waste on Sundays. In the event of a Holiday, Collection that was scheduled to occur on such Holiday shall occur on the day following the Holiday.

8.1.5 Collection Schedule

Contractor shall establish Collection routes and a Collection schedule which shall be reasonably approved by the City Manager, taking into account the efficiency of routes, such that all Single Family Dwelling Customers, Multi-Family Dwelling Customers, and Village Commercial Customers within the City will have not less than one established Collection day each week. Contractor shall provide notice to each Customer of its established Collection day(s), and shall provide at least 30 day's written notice to Customers of any change in their established Collection day(s). Notwithstanding any provision herein to the contrary, should any established Collection day fall on a holiday, or on any other day in which Orange County landfills or other lawful disposal sites to which Solid Waste is taken for disposal are closed, or Recycling facilities to which Recyclable Material or Organics is taken are closed, Contractor shall provide for Collection one (1) day later during the pick-up week, and the regular Collection schedule shall be resumed the following week. A pick-up week shall be defined as Monday through Saturday. Contractor may not change its established Collection schedules without obtaining the prior written consent of the City Manager.

8.1.6 Commingling of Routes

Contractor shall not during its Collection process commingle Solid Waste Collected hereunder with Solid Waste Collected in any other city, or on behalf of any other entity operating or existing within City that is not subject to this Agreement, and is specifically prohibited from combining Collection routes related to Solid Waste Handling Services provided pursuant to this Agreement with Collection routes for other jurisdictions for which it may provide Solid Waste Handling Services. Notwithstanding the forgoing, if Contractor utilizes a methodology satisfactory to the City Manager to account for Solid Waste Collected at Village Commercial Premises within City, and Contractor obtains the written consent of the City Manager to commingle such Solid Waste with Solid Waste Collected from other jurisdictions not subject to this Agreement, Contractor may commingle Solid Waste Collected at Village Commercial Premises in a Collection Vehicle with Solid Waste Collected from other jurisdictions. The City Manager may grant and withdraw his/or her consent for such commingling in his/her absolute and sole discretion.

8.1.7 Replacement of Containers

Contractor shall, whenever possible, place Carts in the street gutter, adjacent to the curb upon completing Collection. Contractor shall replace all Bins in the location upon the property of each Customer utilizing Bins designated for storage of Bins, and shall secure gates, doors, and/or enclosures when applicable.

8.1.8 Contractor's Containers

(A) Contractor's Containers shall meet the minimum standards set forth on the attached Exhibit B.

(B) Contractor shall be responsible to maintain and replace, as necessary, all of its Containers.

(C) All of Contractor's Containers shall be maintained by Contractor in good repair, and any question as to the meaning of this standard shall be resolved by the City Manager.

(D) Contractor shall ensure it maintains an accurate list that contains the total number and type of its Containers at each service address, as well as the frequency of Collection for each such Container. Contractor shall keep this list up to date at all times, provide it to City upon request, and shall include a current updated list with each annual report as set forth in Section 23.3.

(E) All Carts shall be maintained by Contractor in a watertight condition, as shall all Bins which are used primarily for the disposal of Solid Waste containing liquids; and shall at all times comply with the provisions of any applicable NPDES permit.

(F) Contractor shall replace any damaged Carts at no charge to Customers; provided, however, Contractor shall be entitled to charge Customers for the replacement of any Cart that has been damaged by a Customer, ordinary wear and tear excepted. Any such charge shall not exceed Contractor's actual and reasonable costs, which shall be subject to the City Manager's verification and approval.

(G) Contractor shall replace any lost or stolen Carts within three (3) business days, at no cost to Customers. Contractor shall only be obligated to replace a lost or stolen Cart for a Customer at no charge two (2) times during the Term hereof. For each replacement of a lost or stolen Cart thereafter, Contractor shall be entitled to charge Customers an amount which shall not exceed Contractor's actual and reasonable costs, which shall be subject to the City Manager's verification and approval.

(H) Contractor shall, at a Customer's request, annually refurbish, replace, and steam clean as necessary all Bins and Rolloff Boxes at no charge to the Customer. City may require the steam cleaning or replacement of Bins utilized at restaurants, bars and grocery stores/markets more frequently if it determines such action is needed to protect public health and safety. Additional steam cleaning or replacement shall be provided when required by City or requested by a Customer at a charge not to exceed the maximum rate set forth in Exhibit A hereto.

(I) At a Customer's request, Contractor shall relocate a Customer's Bins or Rolloff Boxes to a different location on a Customer's Premises at rates that do not exceed the maximum rates set forth in Exhibit A.

(J) Contractor shall remove any graffiti that appears on its Containers within one (1) business day after becoming aware of it at no charge to Customers. The cost of the first such removal in any calendar year at any Customer address shall be borne by Contractor. Contractor may charge a Customer for any subsequent graffiti removal at the same address in the same calendar year, provided the charges for such removal do not exceed the maximum rates set forth in Exhibit A.

(K) All Bins and Rolloff Boxes shall be kept freshly painted in a uniform fashion and shall be identified with Contractor's name and phone number in letters not

less than three inches high on its exterior so as to be visible when the Container is placed for use.

(L) At a Customer's request Contractor shall provide Bins with locking lids and locks, at rates which do not exceed the maximum rates set forth in Exhibit A. In addition, Contractor may impose a per Collection surcharge upon Customers utilizing locking Bins, at rates which do not exceed the maximum rates set forth in Exhibit A.

8.1.9 Missed Pick-ups

In case of a missed pick-up of properly set out Container(s) called in by a Customer, Contractor shall Collect Solid Waste and Recyclable Material from such Customer no later than the next day of the pick-up week following the date of the call. Records of the addresses of all missed pick-ups shall be maintained by Contractor, and shall be reported to City upon request. If Contractor demonstrates to the satisfaction of the City Manager a pattern of ongoing late "set-outs" by a given Customer, missed pick-ups resulting from late set-outs by that Customer shall not be counted as missed pick-ups in evaluating Contractor's performance hereunder. The Customer service phone system required by Section 10.8.2 hereof is intended, among other things, to serve as a "hotline" for Customers to call in the event Solid Waste placed for Collection is not Collected by Contractor and to facilitate having such Solid Waste Collected as soon as reasonably possible, and in no event later than as required by the provisions hereof.

8.1.10 Record of Non-Collection

As more fully set forth herein, Contractor shall Collect all Solid Waste placed for Collection by Customers in Containers, excepting materials that do not meet the definition of Solid Waste (such as Hazardous Contaminants) or which are commingled with such materials. Whenever Contractor determines not to Collect any Solid Waste deposited for Collection, Contractor shall leave a tag at least 2" by 6" in size, indicating the reason for Contractor's refusal to do so. This information may be either handwritten or left by means of a check system (i.e., checking off boxes on a preprinted form). The tag shall provide Contractor's business name and its local telephone number and shall be securely fastened to the Container or the article refused. Contractor shall maintain a record of all such taggings at its place of business. Such record shall contain the date of such notice, street address, reason for non-Collection, and a summary of any communications between Contractor and the Customer involved. Such record shall be retained so that it may be inspected by representatives of City upon request. At the request of the City Manager, Solid Waste from any Cart shall be Collected if City deems a health and safety threat exists even if the Cart contains materials other than those for which it is designated.

8.1.11 Contaminated Recycling Containers

Contractor and City anticipate that Customers in City will participate in Contractor's Recycling programs in a manner such that the total level of contamination in Recycling Containers within the Franchise Area will not exceed thirteen and one-half percent (13.5%). As used herein, "contamination" refers to materials placed in a Recycling Container other than those Recyclable Materials which the Parties agree are appropriate for Collection therein as more fully set forth in this Agreement. Without limiting Contractor's overall diversion obligations in any

way, City and Contractor agree to utilize the following procedures to assist in achieving the above noted contamination goal:

(A) If Contractor documents that a particular Customer has a Recycling Container with excessive contamination, Contractor shall service the Recycling Container, making whatever accommodations are necessary, such as Collecting the Recycling Container as Solid Waste, or removing the contamination prior to Collection. Contractor will tag the Recycling Container with a notice that includes:

(1) The fact the Recycling Container required special Solid Waste Handling Services and the contents could not be Recycled due to the presence of inappropriate material in the Recycling Container;

(2) A description of the Recyclable Materials that are appropriate for Collection in the Recycling Container;

(3) An explanation that a subsequent incident of excessive contamination may result in non-Collection, the imposition of a contamination fee, and, where warranted, requiring additional or larger-sized Solid Waste Containers, or additional Collections of existing Containers, at an additional cost to the Customer; and

(4) A phone number to contact Contractor to obtain additional information and/or receive responses to questions the Customer may have.

(B) In the event the Customer in question continues to place Recycling Containers with excessive contamination out for Collection, Contractor may Collect the Recycling Container in the same manner as a Container not designated for Collection of Recyclable Material and charge the Customer a contamination fee in an amount that does not exceed the maximum rate set forth in Exhibit A. In addition, where there have been three (3) or more instances of excessive contamination by a Customer in any twelve (12) month period, Contractor may (with approval of the City Manager) deliver additional or larger Solid Waste Containers to the Customer, or require additional weekly Collections as appropriate, and charge the Customer for such increased or additional services at rates that do not exceed the maximum rates set forth in Exhibit A.

8.1.12 Overfilling of Bins or Rolloff Boxes

Where Contractor identifies instances of overfilling of Bins or Rolloff Boxes at any Multi-Family Dwellings or Village Commercial Premises Receiving Bin or Rolloff service, it will document the overfilling through the use of film or digital photography. Contractor may charge an overage fee in an amount not exceeding the maximum rate set forth in Exhibit A for cleaning up the Container area and placing overfilled material into the Collection Vehicle. In addition, Contractor will present evidence of the overfilling to both the City and the Customer. Where such evidence was presented to the Customer, and Contractor documents another instance of overfilling within one (1) year of such presentation, Contractor is authorized to charge an overage fee, deliver the next larger-sized Container to the Customer, and adjust the service rate to the rate then in effect for the next larger-sized Container. Contractor will maintain and provide the City upon request a log listing all Customers where overfilled material was observed, and actions taken in response by Contractor. In addition, Contractor will provide the City

Manager with verbal notification prior to delivering the next larger-sized container and adjusting the service rate.

8.2 Residential Solid Waste Handling Service

8.2.1 Single Family Dwellings – Cart Service

Contractor shall provide each Customer at a Single Family Dwelling with one (1) sixty-four (64) gallon Refuse Cart. Any Customer requesting a larger Refuse Cart(s) shall be provided with a ninety-six (96) gallon Refuse Cart(s) by Contractor instead of the standard sixty-four (64) gallon Cart. For purposes of the rate guarantee set forth in Section 24.2, a Customer shall be deemed to be receiving “Standard Service” if provided with either a sixty-four (64) or ninety-six (96) gallon Refuse Cart, and the size of any Recycling Cart or Green Waste Cart shall not be taken into account. Any Customer requesting a smaller Refuse Cart(s) than that provided with Standard Service shall be provided with a thirty-five (35) gallon Refuse Cart(s) by Contractor. For purposes of the rate guarantee set forth in Section 24.2, a Customer shall be deemed to be receiving “Low Volume Service” if provided with a thirty-five (35) gallon Refuse Cart. Contractor shall Collect all Solid Waste placed out for Collection in Refuse Carts not less than once per week using an automated Collection system at rates that do not exceed the maximum rates set forth in Exhibit A. Contractor shall not be required to Collect Solid Waste that is not contained within a Refuse Cart. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one or more additional Refuse Carts, and shall Collect all Solid Waste placed for Collection in such additional Refuse Carts at rates that do not exceed the maximum rates set forth in Exhibit A. Wherever feasible, Customers shall be directed by Contractor to place Carts for Collection either in the street gutter, against the curb, in front of their Premises, or adjacent to their Premises in the alley or easement in the rear of their Premises. If a Customer and Contractor cannot agree upon a Collection location, or if City determines the selected location may cause safety or other concerns, City may make the final determination of the Collection location. In the event extra pickups are required at a Single Family Dwelling in any given month, Contractor may charge Customer for such pickups an amount that does not exceed the maximum rate for the “extra pick-ups” as set forth in the attached Exhibit A.

8.2.2 Use of Bins at Single Family Dwellings

Upon approval from the City Manager, Bins may be utilized instead of or in addition to Carts at any given Single Family Dwelling. Solid Waste Handling Services provided to Customers at Single Family Dwellings through the use of Bins shall be treated in the same manner as Solid Waste Handling Services at Village Commercial Premises as set forth in this Agreement. Bins shall not be utilized for Solid Waste Handling Services at Single Family Dwellings in the absence of approval by the City Manager, with the exception of Bins used for Temporary Service.

8.2.3 Single Family Dwellings – Senior Citizen Discount

Contractor shall provide any Customer at a Single Family Dwelling who meets the criteria for a Senior Citizen Discount, set forth herein, with Solid Waste Handling Services using either thirty-five (35), sixty-four (64) or ninety-six (96) gallon Carts, at the choice of the

Customer, for Solid Waste, Green Waste and Recyclable Material Collection at rates that do not exceed the maximum rates set forth in Exhibit A applicable to the Senior Citizen Discount. All Solid Waste Handling Services provided to Customers receiving the Senior Citizen Discount, other than the maximum rate charged to such Customers, shall be the same as set forth herein in connection with Solid Waste Handling Services for Customers at Single Family Dwellings. To be eligible for the Senior Citizen Discount, a Customer must be a person who is at least 65 years old, and must be either: (i) both the owner (as shown on the County Assessor's rolls) and a full time resident (as applicable to residency requirements for State income tax purposes) of the Single Family Dwelling at which Solid Waste Handling Services at the Senior Citizen Discount is to be provided, or (ii) both a lessee who is obligated for payment of rent at, and a full time resident of, such Single Family Dwelling. Contractor may require a Customer requesting a Senior Citizen Discount to present reasonable documentation demonstrating that the Customer qualifies for such rate reduction. Any dispute as to whether a Customer qualifies for the Senior Citizen Discount shall be resolved by the City Manager whose determination shall be final. For purposes of the rate guarantee set forth in Section 24.2, "similar services" for Customers receiving the Senior Citizen Discount shall not take into account the size of the Refuse Cart utilized or required to be utilized to receive a similar discount in other cities in Orange County.

8.2.4 Walk-Out Service

Contractor shall provide "Qualified Customers" with "walk-out service" as set forth in this Section at no additional charge. This service shall require Contractor to use its own forces to bring a Customer's Carts from a Customer's backyard, side yard, or such other location at which the Customer's Containers are regularly stored, to Contractor's Collection Vehicle; and, after disposal of the contents thereof, return said Carts to the location where they are regularly stored. To be a "Qualified Customer" for purposes of this Section, a Customer shall have a DMV-issued disabled person placard/license plates, and provide a letter to Contractor from a physician confirming the Customer is unable to move his/her Carts to the curb, and that to the best of the physician's knowledge there is no other capable persons living in Customer's household to provide this service. Contractor may require each eligible Customer to provide a new letter from a physician on an annual basis in order to maintain eligibility for walk-out service. Any dispute regarding a Customer's eligibility for walk-out service shall be resolved by the City Manager. Contractor may provide Customers who are not eligible for free walk-out service pursuant to the foregoing with walk-out service at a rate which shall not exceed the maximum rate set forth in Exhibit A. Contractor may require as a condition of walk-out service that a Customer sign a standardized agreement, the terms of which shall be subject to City's approval, which authorizes entry onto the Customer's property and holds Contractor harmless from liability (including specifically liability related to pets escaping) associated with Contractor providing such service.

8.2.5 Household Hazardous Waste Collection for Qualified Customers

Contractor shall provide each Qualified Customer, one time each year, on-call Door-to-Door Solid Waste Collection services for Household Hazardous Wastes (HHW), at no cost, in the manner set forth herein (the "Door-to-Door HHW Collection Program"). "Qualified Customers" for purposes of this Section shall have the same meaning, and be subject to the same definition, as in Section 8.2.4 above. The Door-to-Door HHW Collection Program shall include the following features:

(A) An ongoing public education program to inform Qualified Customers of the benefits and availability of the Door-to-Door HHW Collection Program;

(B) An annual schedule of Collection periods, appointment deadline, and Collection weeks;

(C) A convenient means by which Qualified Customers may make an appointment to have their HHW Collected;

(D) Instructions and materials (bags, labels, etc.) that will enable Qualified Customers to safely and conveniently prepare their HHW for Collection;

(E) Specific policies and procedures for the Door-to-Door HHW Collection Program such as acceptable Collection locations (doorstep, etc.), list of acceptable and non-acceptable materials, and quantity limits; and

(F) Any other HHW Collection services for Qualified Customers as the City Manager deems reasonably appropriate and that are consistent with waste industry standards for Door-to-Door HHW Collection.

8.2.6 Recycling Program for Single Family Dwellings Using Carts

Contractor shall provide each Customer at a Single Family Dwelling with one (1) sixty-four (64) gallon Recycling Cart at no additional charge. Any Customer requesting a different size Recycling Cart(s) shall be provided with a ninety-six (96) or thirty-five (35) gallon Recycling Cart(s) by Contractor instead of the standard sixty-four (64) gallon Cart noted above. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one (1) or more additional Recycling Carts at no additional charge. Contractor shall Collect Recyclable Material placed in Recycling Carts for Collection from each Customer at a Single Family Dwelling on the same day as such Customer's Refuse Cart is Collected, utilizing an automated Collection process. Customers shall be directed to place Recycling Carts in the same location for Collection as Refuse Carts. As of the Effective Date, the following materials shall be allowed to be deposited by Customers for Collection in Recycling Carts: empty aluminum cans; empty glass jars and bottles; bi-metal, and tin cans; empty aerosol containers; empty polyethylene terephthalate plastic ("PET"); high density polyethylene plastic ("HDPE"); plastics types 3 – 7; plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable by plastic type number, but excluding expanded polystyrene); metal foil; dry newspaper; dry mixed paper (e.g., ledger, computer paper, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and nonmetallic wrapping paper); dry corrugated cardboard; and telephone books. City and Contractor agree to meet from time to time as needed, and in good faith consider modifications to the above list of acceptable Recyclable Material to address developments in processing technologies, emerging uses for various types of materials, changes in available markets, or other relevant issues.

8.2.7 Curbside Grease Collection Program

If requested to do so by City, or if required during the Term by CalRecycle, or any federal or state law or regulation, Contractor shall design a program for the collection of grease,

fat, oils and similar waste generated from household cooking activities (the “Curbside Grease Collection Program”), to be approved by the City Manager. Contractor shall be responsible to ensure the Curbside Grease Collection Program complies with all Applicable Laws. At such time as (if) a Curbside Grease Collection Program is implemented, Contractor and City shall meet and confer in good faith in advance to determine a fair and reasonable adjustment to the maximum rates set forth in Exhibit A in order to fairly compensate Contractor for implementing such a program. Except in the event that the Grease Collection Program is or becomes required by CalRecycle, or any federal, state, or local law or regulation, the incremental cost of providing the Curbside Grease Collection Program shall not be considered as “Services for Residential Premises” for purposes of Section 24.2.

8.2.8 Curbside Food Waste Collection Program

If requested to do so by City, or if required during the Term by CalRecycle, or any federal or state law or regulation, Contractor shall design a program for the curbside Collection of food waste generated from household activities (the “Curbside Food Waste Collection Program”), to be approved by the City Manager. Contractor shall be responsible to ensure the Curbside Food Waste Collection Program complies with all Applicable Laws. At such time as a Curbside Food Waste Collection Program is implemented at the request of City, and in order to ensure that Contractor is fairly compensated for any additional costs incurred in implementing such a program, Contractor and City shall meet and confer in good faith in advance to determine a fair and reasonable adjustment to the maximum rates set forth in Exhibit A in order to fairly compensate Contractor for implementing such a program. Except in the event that the Curbside Food Waste Collection Program is or becomes required by CalRecycle, or any federal or state law or regulation, the incremental cost of providing the Curbside Food Waste Collection Program shall not be considered as “Services for Residential Premises” for purposes of Section 24.2.

8.2.9 Green Waste Program for Single Family Dwellings Using Carts

Contractor shall provide all Customers at Single Family Dwellings to whom it provides Refuse Carts, with one (1) sixty-four (64) gallon Cart for Collection of commingled Green Waste (a “Green Waste Cart”) at no additional charge. Any Customer requesting a different size Green Waste Cart(s) shall be provided with a ninety-six (96) or thirty-five (35) gallon Green Waste Cart(s) by Contractor instead of the standard sixty-four (64) gallon Cart noted above. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one (1) or more additional Green Waste Carts at rates that do not exceed the maximum rates set forth in Exhibit A. Contractor shall Collect Green Waste placed in Green Waste Carts for Collection from each Customer on the same day as such Customers’ Refuse Cart is Collected, using an automated Collection process. Customers shall be directed to place Green Waste Carts in the same location for Collection as Refuse Carts.

Notwithstanding the above, any Customer that indicates it does not wish to receive a Cart for the disposal of Green Waste shall not be provided with such a Cart, and Contractor shall retrieve such Carts from any Customer that receives one and thereafter indicates it no longer desires to have a Cart for the disposal of Green Waste. In addition, and unless otherwise directed by the City Manager, Contractor shall not distribute Green Waste Carts to Customers living in

areas governed by homeowner associations if the governing association requests that Green Waste Carts not be delivered to its members.

8.2.10 Use of Bins for Multi-Family Dwelling Customers

Contractor shall supply Multi-Family Dwelling Customers with Bins meeting the minimum standards set forth in Exhibit B for Solid Waste Handling Services. Contractor shall provide each Premises with Multi-Family Dwellings with at least one Bin for Collection of Solid Waste, and shall Collect all Solid Waste placed therein for Collection not less than once per week, at rates that do not exceed the maximum rates set forth in Exhibit A. Contractor shall provide a number of Bins reasonably needed for Solid Waste Collection at each Premises with Multi-Family Dwellings bearing in mind both the number of Dwelling Units and space limitations. Contractor shall endeavor to provide at least one (1) Bin for every ten (10) Dwelling Units located at each Premises with Multi-Family Dwellings. The size of Bins utilized, and the frequency of their Collection, shall be mutually agreed upon by Contractor and its Customers, except that Collection shall occur not less than one (1) time per week and City shall have the right to impose minimum requirements for Bin sizes and more frequent Collection should it determine such action is needed to protect public health, safety and welfare. In the event of any dispute as to the adequacy of the number of Bins at any given Premises with Multi-Family Dwellings, the City Manager shall have the ability to approve the number of Bins used at such location. As an alternative to the requirements of this Section and upon written approval of the City Manager, Contractor shall offer Collection in ninety-six (96) gallon Refuse Carts and/or ninety-six (96) gallon Recycle Carts to Multi-Family Dwelling Customers that do not have space for, or do not generate enough waste to require the use of, Bins for Collection. Rates for Multi-Family Dwelling Customers receiving such service shall not exceed the maximum rates set forth in Exhibit A for Single Family Dwelling Cart service. If Contractor and the Multi-Family Dwelling Customer have a disagreement as to whether a Refuse Cart and/or Recycle Cart (as applicable) is appropriate, or if City determines that Collection in a Refuse Cart and/or Recycle Cart (as applicable) causes health and safety or other concerns, the City Manager shall make the final determination as to whether Collection in a Refuse Cart and/or Recycle Cart (as applicable) may occur.

8.2.11 Multi-Family Dwelling Recycling Program

Contractor shall provide a Recycling program to all Premises with Multi-Family Dwellings (the "Multi-Family Dwelling Recycling Program") that at a minimum meets the standards required under AB 341. Contractor shall also assist the City in identifying Multi-Family Dwelling Customers that are not in compliance with the Recycling requirements set forth in AB 341. Contractor shall provide periodic on-site visits to such Premises to offer and promote Recycling services as required, attempt to resolve any logistical detriments to providing these services, and notify and request assistance from the City for potential follow up action where there is a repeated refusal to implement Recycling Collection services. City agrees to provide reasonable assistance to Contractor, which may include adding its name to materials prepared for distribution to Customers regarding AB 341 requirements, consideration of ordinances which may assist with gaining compliance with AB 341 requirements, and occasional participation by City personnel in meetings with Customers who repeatedly refuse to implement Contractor's Recycling programs. Contractor shall be responsible for ensuring that its Multi-Family Dwelling Recycling Program, combined with its other programs, enables it to achieve the required

diversion rates specified in this Agreement and may be required to modify its program from time to time, at no additional cost to the City or Multi-Family Dwelling Customers, as may be necessary to cause City to meet such diversion requirements.. Contractor shall produce, keep current, and provide public information specifically outlining its Multi-Family Dwelling Recycling Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in City. Contractor may charge Customers for services provided pursuant to its Multi-Family Dwelling Recycling Program rates that do not exceed the maximum rates set forth in Exhibit A.

8.2.12 Multi-Family Dwelling Organics Program

Contractor shall offer and provide an Organics Collection program to all Multi-Family Dwelling Customers (the “Multi-Family Dwelling Organics Program”) that at a minimum meets the standards required under AB 1826. Contractor shall also assist the City in identifying Multi-Family Dwelling Customers that are not in compliance with the requirements set forth in AB 1826. Contractor shall provide periodic on-site visits to such Premises to offer and promote the Multi-Family Dwelling Organics Program services as required, attempt to resolve any logistical detriments to providing these services, and notify and request assistance from the City for potential follow up action where there is a repeated refusal to implement the Multi-Family Dwelling Organics Program. City agrees to provide reasonable assistance to Contractor, which may include adding its name to materials prepared for distribution to Multi-Family Dwelling Customers regarding AB 1826 requirements, consideration of ordinances which may assist with gaining compliance with AB 1826 requirements, and occasional participation by City personnel in meetings with Multi-Family Dwelling Customers who repeatedly refuse to implement the Multi-Family Dwelling Organics Program. Contractor shall be responsible for ensuring that its Multi-Family Dwelling Organics Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its program from time to time, at no additional cost to the City or Multi-Family Dwelling Customers, to meet such diversion requirements. Contractor shall produce, keep current, and provide public information specifically outlining its Multi-Family Dwelling Organics Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in City. Contractor may charge Multi-Family Dwelling Customers for the services under the Multi-Family Dwelling Organics Program rates that do not exceed the maximum rates set forth in Exhibit A.

8.2.13 Bulky Item Service for Single Family Dwellings

Contractor shall provide Bulky Item Collection services, on an on-call basis, to all Single Family Dwelling Customers in City. Contractor shall not charge for the first four (4) requests for Bulky Item Collection during each calendar year from any Single Family Dwelling Customer receiving Cart service, and each “no charge” Bulky Item Collection event shall be limited to four (4) Bulky Items. One (1) non charge Bulky Item Collection shall be deemed to occur each time Contractor Collects up to four (4) Bulky Items in any single pick-up; for example, if Contractor Collects between five (5) and eight (8) Bulky Items in a single no charge pick-up, two (2) no charge Bulky Item Collections shall be deemed to have occurred. Thereafter, Contractor may charge Single Family Dwelling Customers rates for Bulky Item Collection which shall not exceed the maximum rates set forth in the attached Exhibit A. The Bulky Item Collection service set forth in this Section shall only apply with respect to Bulky Items generated at the

Dwelling Unit at which the Single Family Dwelling Customer calling for Bulky Item Collection service resides. In order to receive such service, residents shall provide Contractor with notice by phone of the number and type of Bulky Items to be Collected. Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Single Family Dwelling Customer's call for service and Contractor shall Collect and dispose of all Bulky Items placed for Collection pursuant to the terms hereof. Contractor shall produce, keep current, and provide public information specifically outlining its Bulky Item Collection service, which shall specifically include the annual publication and distribution of a brochure describing this service to residents of all Single Family Dwellings in City.

8.2.14 Bulky Item Service for Multi-Family Dwellings

Contractor shall provide Bulky Item Collection service to Multi-Family Dwelling Customers (subject to permission from each Multi-Family Dwelling complex), by providing such Collection one (1) time per month on a designated date, at a designated location within the Multi-Family Dwelling complex, at no charge to the Multi-Family Dwelling Customers. Contractor shall work with the property manager of each Multi-Family Dwelling complex to arrange for a monthly Bulky Item Collection date, which is anticipated to occur during the third (3rd) week of each month. On each such Collection date, Contractor shall Collect all Bulky Items placed for Collection at the designated location at no charge. In addition, Multi-Family Dwelling Customers may deliver Bulky Items to Contractor's facility known as the Sunset Transfer Station, located in City, during its normal operating hours at no charge. If a Multi-Family Dwelling Customer requests additional Bulky Item Collection, Contractor shall provide such service on an on-call basis and may charge Multi-Family Dwelling Customers rates for such Bulky Item Collection which do not exceed the maximum rates set forth in the attached Exhibit A. In order to receive on-call Bulky Item service, Multi-Family Dwelling Customers shall provide Contractor with notice by phone of the number and type of Bulky Items to be Collected. On-call Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining its Bulky Item Collection service, which shall specifically include the annual publication and distribution of a brochure describing this service to all Multi-Family Dwelling Customers in City.

8.2.15 Bulky Item Diversion

Bulky Items Collected pursuant to this Agreement may not be landfilled until the following hierarchy of diversion efforts has been followed by Contractor:

- (A) Reuse as is (if energy efficient);
- (B) Disassemble for reuse or Recycling;
- (C) Recycle, Transformation, or other means of diversion; and
- (D) Disposal.

This hierarchy is intended to preclude the use of front or rear loading packer vehicles for Bulky Items unless the compaction mechanism is not used to compact the Bulky Items. The

disposition of Bulky Items shall be tracked by Contractor and this information shall be included in Contractor's quarterly reports to City.

8.2.16 Proper Handling of Bulky Items

Contractor shall properly and in accordance with all Applicable Laws, handle and dispose of all materials required to be Collected as Bulky Items, including specifically items that require special handling pursuant to the Environmental Laws, such as materials commonly known in the waste industry as "universal waste" and/or "e-waste."

8.2.17 Residential Sharps Collection Program

Contractor shall provide a program for the Collection of used needles (the "Sharps Collection Program") to all Single Family Dwelling Customers or Multi-Family Dwelling Customers who request to participate in such Sharps Collection Program. At a minimum, the Sharps Collection Program shall result in each Single Family Dwelling Customer or Multi-Family Dwelling Customer who desires to participate in it annually receiving one "kit", which shall be comprised of a Collection container and a mailing box for such container preaddressed for delivery to a properly permitted disposal location. Each Single Family Dwelling Customer and Multi-Family Dwelling Customer participating in the Sharps Collection Program shall receive one mailing box annually which has been marked so as to provide for prepaid postage. Contractor shall provide a number of "kits" that equal five percent (5%) of all Dwelling Units in existence in the City during each July 1 – June 30 period at no cost to participating Customers. Initial kits in excess of such amount, or additional Collection containers and mailing boxes for Customers participating in the Sharps Collection Program shall be provided on such basis as may be requested by participating Customers at rates that do not exceed the maximum rates set forth in Exhibit A. Should Customers comprising more than 5% of Dwelling Units in the City desire to participate in the Sharps Collection Program, Contractor and City shall determine a fair methodology for determining which Customers receive kits at no cost, and which Customers will be required to pay for them. Contractor shall be responsible to ensure the Sharps Collection Program complies with all Applicable Laws, and shall produce, keep current, and provide written public information outlining its Sharps Collection Program, which shall be annually distributed to Single Family Dwelling Customers and Multi-Family Dwelling Customers in City.

8.2.18 Residential Non-Controlled Medication Collection Program

If requested to do so by City, or if required during the Term by CalRecycle, or any federal or state law or regulation, Contractor shall design and present a program to City for the Collection of unused medicines other than any medicines which are or contain any "controlled substance," as defined in Applicable Laws (the "Non-Controlled Medication Collection Program"), to be approved by the City Manager. Contractor shall be responsible to ensure any Non-Controlled Medication Collection Program complies with all Applicable Laws. It is anticipated that any Non-Controlled Medication Collection Program at a minimum will allow for Single Family Dwelling Customers and Multi-Family Dwelling Customers to mail unused medication (excepting controlled substances) to a specific Collection location, in specialized packaging provided by Contractor which has been marked so as to provide for prepaid postage, and/or deliver unused medication (excepting controlled substances) to a location in or near City designated by Contractor. At such time as (if) a Non-Controlled Medication Collection Program

is implemented, Contractor and City shall meet and confer in good faith in advance to determine a fair and reasonable adjustment to the maximum rates set forth in Exhibit A in order to fairly compensate Contractor for implementing such a program. Except in the event that the Non-Controlled Medication Collection Program is or becomes required by CalRecycle, or any federal or state law or regulation, the incremental cost of providing the Non-Controlled Medication Collection Program shall not be considered as “Services for Residential Premises” for purposes of Section 24.2.

8.2.19 Curbside Household Hazardous Waste Program

In the event the County of Orange ceases to operate a Household Hazardous Waste (“HHW”) collection center within the City Limits, Contractor agrees to provide for, directly or on a subcontract basis, the curbside Collection, transportation and proper disposal of HHW according to any applicable state or federal guidelines (the “Curbside HHW Collection Program”). If required, said Collection shall occur on a semi-annual basis, but may be increased to an every other month basis at the City’s option if response warrants, as determined by the City Manager. Contractor shall be responsible for all costs of providing such a Curbside HHW Collection Program. The Parties assume that total annual volume of HHW Collected shall not exceed sixty (60), fifty-five (55) gallon drums. If annual volumes exceed sixty (60), fifty-five (55) gallon drums, the Parties shall negotiate in good faith to come to agreement on sharing costs for such excess. In addition, at the request of the City, Contractor shall design and implement a program for on-call Door-to-Door Collection services for (HHW) for all Single Family Dwelling Customers and Multi-Family Dwelling Customers in the manner described in Section 8.2.5. Contractor and City shall meet and confer in good faith in advance to determine a fair and reasonable adjustment to the maximum rates set forth in Exhibit A in order to fairly compensate Contractor for implementing such a Curbside HHW Collection Program, taking into consideration Contractor’s obligations in the event that the County of Orange ceases operation of its facility. Except in the event that curbside Collection of HHW becomes “standard” in the waste industry, the incremental cost of providing curbside HHW Collection shall not be considered as “Services for Residential Premises” for purposes of Section 24.2. Curbside Collection of HHW shall be deemed to have become “standard” in the waste industry if seventy-five percent (75%) or more of the jurisdictions in Orange County provide curbside Collection of HHW on a jurisdiction-wide basis.

8.3 Village Commercial Premises Solid Waste Handling Services

8.3.1 Use of Bins and Rolloff Boxes for Village Commercial Customers

Contractor shall provide all Village Commercial Customers with at least one (1) Bin and/or Rolloff Box for Collection of Solid Waste, and shall Collect all Solid Waste placed therein for Collection not less than once per week, at rates that do not exceed the maximum rates set forth in Exhibit A. Contractor shall make the Solid Waste Handling Service available on a Monday through Saturday basis. Contractor shall provide additional Containers to Village Commercial Customers and shall provide additional Collections upon request, or as may be required by City’s Municipal Code, health and safety requirements, or by the City Manager, and may charge rates for such Collection which do not exceed the maximum rates set forth in Exhibit A. Bins and Rolloff Boxes shall be Collected by Contractor from the location upon each Village Commercial Customer’s property designated for their storage, and replaced to that location with

gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by the Village Commercial Customer and Contractor. Contractor shall provide other services desired by Village Commercial Customers, including use of Containers with castors, hasps or locks; extra pickups; relocation of Containers; Collection of Village Commercial Customer-owned Rolloff Boxes; or use of compactors and vertical compactors, at the rates not exceeding the maximum rates set forth in Exhibit A.

8.3.2 Overload Surcharge

Contractor may impose an overload surcharge, at rates not exceeding the maximum rates set forth in Exhibit A, in connection with handling Bins or Rolloff Boxes that are overloaded. A Bin is deemed to be overloaded if Solid Waste protrudes more than one (1) foot above the surface, and a Rolloff Box is deemed to be overloaded in the same circumstance or if the Bin would not comply with Applicable Laws. If the weight of a Rolloff Box is such that it requires a specialized Collection Vehicle (meaning one having additional axles, or otherwise designed to carry a load that exceeds that which is standard in the Solid Waste industry applicable to a Rolloff Box) in order to allow it to be Collected in a manner that complies with Applicable Laws, Contractor may charge a "Heavy Truck Service" charge (in addition to other applicable charges), in an amount that does not exceed the maximum rate set forth in Exhibit A.

8.3.3 Rolloff Box Standby and Dead Run Charges

When Contractor arrives at the time scheduled with a Village Commercial Customer to Collect Rolloff Boxes, there may be occasions in which the Village Commercial Customer: (1) advises Contractor's personnel that it has decided not to have the Rolloff Box Collected at all and Contractor therefore makes a trip without "pulling" the Rolloff Box (a "Dead-run") or, (2) asks Contractor's personnel to wait for a period of time before "pulling" the Rolloff box ("Standby Time"). Contractor may charge Village Commercial Customers a rate for Dead-runs not exceeding the maximum rate set forth in the attached Exhibit A. Contractor may not charge Village Commercial Customers for an initial 10 minutes of Standby Time, but thereafter may charge Village Commercial Customer a rate for Standby Time, which rate shall not exceed the maximum rate set forth in the attached Exhibit A. After 20 minutes of Standby Time, Contractor may leave without servicing the Customer and charge the Customer for a Dead-run

8.3.4 Access to Containers

Contractor shall undertake all reasonable efforts to complete Collection at each Village Commercial Customer in accordance with scheduled routing. If, at the scheduled time for Collection, the Container is not accessible to the Collection Vehicle, Contractor shall notify the Village Commercial Customer by telephone of the situation and request that access be provided. If the Village Commercial Customer is unavailable or unable to provide prompt access to the Container, Contractor shall provide Collection service a later time, but may charge an extra pickup fee in an amount not exceeding the maximum rate set forth in Exhibit A.

8.3.5 Saturday, Sunday, or Holiday Bin or Rolloff Collection

If a Village Commercial Customer requests that a Bin or Rolloff Box be Collected on a Saturday, Sunday, or Holiday (and, if such Collection request is for a Sunday or Holiday, the request has been approved by the City Manager), in addition to any other applicable charges,

Contractor may charge a Collection surcharge that does not exceed the maximum rate set forth in Exhibit A.

8.3.6 Village Commercial Carts

As an alternative to the requirements of Section 8.3.1 and upon written approval of the City Manager, Contractor shall offer Collection in ninety-six (96) gallon Refuse Carts to Village Commercial Customers that do not have space for, or do not generate enough waste to require the use of, Bins for Collection. Rates for Village Commercial Customers receiving such service shall not exceed the maximum rates set forth in Exhibit A. If Contractor and a Village Commercial Customer have a disagreement as to whether a Refuse Cart is appropriate, or if City determines the Collection in a Refuse Cart causes health and safety or other concerns, the City Manager shall make the final determination as to whether Collection in a Refuse Cart may occur.

8.3.7 Village Commercial Bulky Item Service

Contractor shall provide unlimited Bulky Item Collection services to Village Commercial Customers on an on-call basis. Contractor may charge rates for such services which shall not exceed the maximum rates set forth in the attached Exhibit A. Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Village Commercial Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining the Bulky Item pick-up service. Bulky Items Collected pursuant to this Section are subject to the diversion and handling requirements set forth in Sections 8.2.15 and 8.2.16.

8.3.8 Village Commercial Premises Recycling Services

(A) Contractor shall offer and provide a Recycling program for Village Commercial Customers (the "Village Commercial Premises Recycling Program") that at a minimum meets the standards required under AB 341, and such program shall be consistent with any ordinances adopted by the City to implement AB 341. Contractor shall assist the City in identifying Village Commercial Customers that are not in compliance with the Recycling requirements set forth in AB 341. Contractor shall provide periodic on-site visits to such Premises to offer and promote Recycling services as required, attempt to resolve any logistical detriments to implementing the Village Commercial Premises Recycling Program, and notify and request assistance from the City for potential follow up action where there is a repeated refusal to implement the Village Commercial Premises Recycling Program. City agrees to provide reasonable assistance to Contractor, which may include adding its name to materials prepared for distribution to Village Commercial Customers regarding AB 341 requirements, consideration of ordinances which may assist with gaining compliance with AB 341 requirements, and occasional participation by City personnel in meetings with Village Commercial Customers who repeatedly refuse to implement the Village Commercial Premises Recycling Program. Contractor shall be responsible for ensuring that its Village Commercial Premises Recycling Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its program from time to time, at no additional cost to the City or to Village Commercial Customers, to meet such diversion requirements. Contractor shall

produce, keep current, and provide public information specifically outlining its Village Commercial Premises Recycling Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Village Commercial Customers in City.

(B) Contractor shall provide, free of charge, commingled or source separated Recycling Collection services to all Village Commercial Customers. Contractor will provide commingled and source separated Recyclable Materials Collection in Containers designated for Recycling, either Bins or Carts as appropriate to the individual Village Commercial Customer. Contractor shall Collect Recyclable Material placed in Recycling Containers from each Village Commercial Customer at frequencies agreed upon with such Customer, but not less than once per week. As of the Effective Date, the following materials shall be allowed to be deposited by Customers for Collection in Recycling Containers: empty aluminum cans; empty glass jars and bottles; bi-metal, and tin cans; empty aerosol containers; empty polyethylene terephthalate plastic ("PET"); high density polyethylene plastic ("HDPE"); plastics types 3 – 7; plastic toys and tools, plastic bags and plastic wrap (but only where source separated Recycling is being utilized), and other plastic materials (if readily identifiable as being recyclable by plastic type number, but excluding expanded polystyrene); metal foil; dry newspaper; dry mixed paper (e.g., ledger, computer paper, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and nonmetallic wrapping paper); dry corrugated cardboard; and telephone books. City and Contractor agree to meet from time to time as needed, and in good faith consider modifications to the above list of acceptable Recyclable Material to address developments in processing technologies, emerging uses for various types of materials, changes in available markets, or other relevant issues.

(C) On an ongoing basis throughout the Term, Contractor shall make a proactive effort, utilizing outreach methods and frequency approved by the City Manager, to make all Village Commercial Premises aware of the availability of its free-of-charge recycling services and programs. As part of its quarterly reports to City, Contractor shall provide details on such efforts to inform Village Commercial Customers that its recycling services are available free of charge in a form approved by City Manager, including but not limited to provision of business names, business contacts, and phone numbers of such Village Commercial Customers contacted, and samples of materials provided to said Village Commercial Customers during the subject quarter.

8.3.9 Village Commercial Organics Program

Contractor shall offer and provide a Commercial Organics Collection program to all Village Commercial Customers (the "Village Commercial Organics Program"), to be approved by the City Manager, that at a minimum meets the requirements of AB 1826. Contractor shall also assist the City in identifying Village Commercial Customers that are not in compliance with the requirements set forth in AB 1826. Contractor shall provide periodic on-site visits to Village Commercial Customers to offer and promote its Village Commercial Organics Program, attempt to resolve any logistical detriments to providing services offered thereunder, and notify and request assistance from the City for potential follow up action where there is a repeated refusal to implement the Village Commercial Organics Program. City agrees to provide reasonable assistance to Contractor, which may include adding its name to materials prepared for

distribution to Customers regarding AB 1826 requirements, consideration of ordinances which may assist with gaining compliance with AB 1826 requirements, and occasional participation by City personnel in meetings with Village Commercial Customers who repeatedly refuse to implement the Village Commercial Organics Program. Contractor shall be responsible for ensuring that its Village Commercial Organics Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its program from time to time, at no additional cost to the City or Customers, to meet such diversion requirements. Contractor shall produce, keep current, and provide public information specifically outlining its Village Commercial Organics Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in City. Contractor may charge Village Commercial Customers for the Collection services under the Village Commercial Organics Program rates that do not exceed the maximum rates set forth in Exhibit A.

8.3.10 Scout and Push Out Services

Certain Village Commercial Premises and Multi-Family Dwellings within the City Limits are uniquely configured such that Contractor may determine that a smaller vehicle may be needed to retrieve a Customer's Container in order for a regular Collection Vehicle to service the Container ("Scout Service"). In addition, certain Premises may be configured such that a Customer's Container must be manually moved a distance of more than twenty-five (25) feet in order to be serviced by a Collection Vehicle ("Push Out Service"). Contractor shall provide Scout Service and Push Out Service as it deems appropriate at rates which shall not exceed the maximum rates set forth in Exhibit A. If Contractor and a Customer have a disagreement as to whether Scout Service and Push Out Service is appropriate the City Manager shall make the final determination as to whether Scout Service or Push Out Service is needed to service the Customer's Containers.

8.3.11 Small-Generator Hazardous Waste Collection

Subject to prior approval of City Manager, Contractor will develop and distribute educational materials identifying providers of Hazardous Waste Collection services to Village Commercial Customers that qualify under Applicable Laws as "conditionally exempt small quantity generators of Hazardous Waste." These materials will be distributed at least once each year as part of Contractor's regular monthly Billing to Village Commercial Customers.

8.4 Other Collection Programs As May Be Required by Law

In the event CalRecycle, or any federal or state law or regulation, imposes upon City or Contractor a requirement for the implementation of any source separated program for the Collection of any type of discarded material (whether or not meeting the definition of Solid Waste hereunder) not already covered by this Agreement, whether commercial or residential in nature, Contractor shall design and present a program to City to comply with such requirement, which program shall meet the City Manager's reasonable approval ("Proposed Program"). Prior to the implementation of any such Proposed Program, City and Contractor shall meet and confer in good faith in advance to determine a fair and reasonable adjustment to the maximum rates set forth in Exhibit A in order to fairly compensate Contractor for implementing said Proposed Program. The forgoing shall not relieve Contractor of its obligations to provide services and

rates consistent with those in Orange County, as more fully set forth in Section 24 hereof, which obligation shall be taken into account in connection with good faith negotiations related to a rate increase for services imposed due to newly enacted regulatory requirements.

In determining a fair and reasonable rate adjustment, City shall consider the cost to Contractor in providing the Proposed Program. If City and Contractor cannot agree on a rate adjustment for the Proposed Program within ninety (90) days from the date City first requests Contractor design and present the Proposed Program to City, then City may enter into an agreement with another party for the services that would be provided by Contractor's Proposed Program and Contractor agrees that the Proposed Program shall be exempt from the exclusivity granted to Contractor in this Agreement.

Contractor shall present the Proposed Program within ninety (90) days of a request to do so by City. The Proposed Program shall include a detailed description of the following: (1) Containers to be used and method of Collection; (2) equipment to be used (e.g., vehicle number, models, capacity, and age); (3) number of employees required for the Proposed Program; (4) materials to be Collected; (5) promotional and public education materials; and (6) a one-year projected financial analysis of the Proposed Program's operations in an operating statement format, including documentation of the key assumptions underlying the projections, and the support for those assumptions.

8.5 Recycling Obligations and Public Education Program

8.5.1 Minimum Requirements for Recyclable Materials, Green Waste, and Rolloff Boxes

Contractor shall utilize a truck dedicated for the purpose of Collecting Green Waste from Customers, such that Green Waste which has been separated prior to Collection, once Collected, is not commingled with other Solid Waste (including Recyclable Material). Similarly, Contractor shall utilize a truck dedicated for the purpose of Collecting Recyclable Materials, such that Recyclable Material Collected in Recycling Carts or Recycling Bins, once Collected, is not commingled with other Solid Waste (including Green Waste). All material Collected by Contractor in Recycling Carts or Bins pursuant to this Agreement shall be delivered to a properly permitted facility for Recycling and reuse purposes. All Green Waste separated prior to Collection and thereafter Collected by Contractor pursuant to this Agreement (including specifically materials Collected in Green Waste Carts and holiday Trees) shall be delivered to a properly permitted facility for Recycling, mulching, composting, or alternative uses for which diversion credit is provided as may be approved by CalRecycle.

8.5.2 Extent of Applicable Franchise Rights

Nothing in this Agreement shall be construed as giving Contractor the right to Collect Recyclable Material that has not been discarded and placed for Collection by Contractor in a location designated for that purpose.

8.5.3 AB 939 Obligations, Guarantee, and Indemnification

8.5.3.1 Warranties and Representations, Diversion Guarantee

Contractor warrants and represents that it is aware of and familiar with City's Source Reduction and Recycling Element (the "SRRE"), that it is familiar with City's waste stream, and that it has the ability to and will provide sufficient programs and services to ensure that within the Franchise Area City will meet or exceed the diversion goals (including, without limitation, amounts of Solid Waste to be diverted and time frames for diversion, and any other requirements) set forth in AB 939, and all amendments thereto, and that it shall do so without imposing any costs or fees other than those for which maximum rates are set forth in Exhibit A (including if it implements new programs to achieve such goals which are not called out herein). Stated otherwise, Contractor acknowledges that it is responsible for ensuring that its various programs achieve the diversion requirements hereunder within the Franchise Area, and that it may be required to modify its programs from time to time, at no additional cost to the City or Customers, to meet such diversion requirements.

8.5.3.2 Mutual Cooperation

City and Contractor shall reasonably cooperate in good faith with all efforts by each other to meet City's diversion and other compliance requirements imposed by AB 939, AB 341, AB 1826, and other Applicable Laws. In this regard, City's obligations shall include, without limitation, making such petitions and applications as may be reasonably requested by Contractor for time extensions in meeting diversion goals, or other exceptions from the terms of AB 939, AB 341, AB 1826, and other Applicable Laws.

8.5.3.3 Waste Reduction and Program Implementation

Contractor shall implement the programs required by this Agreement immediately upon the Effective Date hereof. In meeting this obligation Contractor shall be mindful of and comply with all requirements of the County Agreement, including specifically, without limitation, the requirements thereof generally relating to (i) the delivery of Solid Waste only to transfer stations that provide quarterly certifications of Solid Waste delivered, and (ii) the disposal of residual Solid Waste that remains after Recycling processes have been completed. Contractor shall provide City with quarterly and annual written reports in a form adequate to meet City's AB 939, AB 341, and AB 1826 related filing and reporting requirements to CalRecycle and to the County of Orange throughout the Term of this Agreement wherein City's performance under the above programs shall be set forth in detail. Contractor shall be responsible to prepare, or assist City with the preparation of, all reports and other information as may be required by any agency, including specifically, the State of California, in order to comply with AB 939, AB 341 or AB 1826. Contractor shall reimburse City for any costs City incurs in appearing before CalRecycle and/or the County of Orange in relation thereto.

8.5.3.4 Guarantee and Indemnification

Contractor warrants and guaranties that it will carry out its obligations under this Agreement such that, within the Franchise Area: (i) both it and City will at all times be in compliance with the requirements of all Applicable Laws, including specifically AB 939, AB 341, and AB 1826, and (ii) City will meet or exceed the diversion requirements (including,

without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in AB 939, AB 341, and all amendments thereto; provided, however, that Contractor shall not be in breach of the guarantee obligations set forth above to the extent that, despite Contractor's best efforts, Contractor is prevented from satisfying clause (i) and/or clause (ii) above due to factors outside of Contractor's direct or indirect control. Contractor shall immediately notify City, in writing, in the event Contractor determines that Contractor may not satisfy clause (i) and/or clause (ii) above. Furthermore, Contractor agrees that it will, in addition to any other requirement contained herein, subject to the requirements of Public Resources Code Section 40059.1, at its sole cost and expense:

(A) defend, with counsel approved by City, indemnify, and hold harmless City and City's officials, employees, and agents from and against all fines and/or penalties and other liabilities which may be imposed by CalRecycle or any other regulatory agency if: (1) Contractor fails or refuses to timely provide information relating to its operations which is required pursuant to this Agreement or any Applicable Laws and such failure or refusal prevents or delays City from submitting reports required by Applicable Laws in a timely manner; or (2) the source reduction and Recycling goals, diversion goals, program implementation requirements, or any other requirements of Applicable Laws are not met within the Franchise Area;

(B) assist City in responding to inquiries from CalRecycle;

(C) assist City in preparing for, and participating in any review of City's SRRE pursuant to Applicable Laws;

(D) assist City in applying for any extension if so directed by City;

(E) assist City in any hearing conducted by CalRecycle relating to City's compliance with Applicable Laws;

(F) assist City with the development of and implement a public awareness and education program that is consistent with the City's SRRE and HHWE, as well as any related requirements of Applicable Laws;

(G) provide City with advice on Recycling, source reduction, and other technical assistance related to compliance with the Applicable Laws;

(H) defend, with counsel acceptable to City, City and City's officials, employees, and agents against the imposition of fines and/or penalties, or any other liabilities, issued by CalRecycle pursuant to AB 939;

(I) be responsible for and pay, any fees, penalties or other costs imposed against the City by CalRecycle, and indemnify and hold harmless City from and against any fines, penalties, or other liabilities, levied against it for violation of AB 939's diversion requirements, or violation of any other provision of the Applicable Laws, arising from or in any way related to Contractor's performance of its obligations under this Agreement.

8.5.4 Guaranteed Minimum Contractor Recycling Rate

Contractor shall conduct its operations hereunder such that a minimum of fifty percent (50%) of all Solid Waste Collected within the Franchise Area from Single Family Dwelling Customers and Multi-Family Dwelling Customers receiving Solid Waste Handling Services in Carts (taking into account diversion achieved by efforts other than its services) is diverted from disposal at landfills for each calendar year beginning January 1, 2016 (“Recycling Diversion Requirement”). For the purposes of this section, diversion includes only Recycling methods, Transformation (and/or other forms of converting Solid Waste into energy), and other processes which are accepted by the State toward meeting the City’s diversion goal under AB 939. Contractor shall not be entitled to a reduction in the Recycling Diversion Requirement, or a rate adjustment, if or when:

- Transformation or other facilities are no longer available for any reason;
- CalRecycle diversion credit under AB 939 or other Applicable Laws is no longer provided for Solid Waste sent to a Transformation facility; or
- CalRecycle diversion credit under AB 939, AB1594, or other Applicable Laws expires for Green Waste used as alternative daily landfill cover.

To comply with this section, Contractor is required to submit timely tonnage reports supporting the Recycling Diversion Requirement, and to provide supporting documentation as may be requested by City or its designee as part of, or independent of, an audit. Failure to meet, and fully support, the Recycling Diversion Requirement may result in City assessing liquidated damages in accordance with Section 18.7.3.6 and/or termination of this Agreement pursuant to Section 18.6(H).

8.5.5 Waste Generation/Characterization Studies

Contractor acknowledges that City must perform Solid Waste generation and disposal characterization studies periodically to comply with the requirements of AB 939. Contractor agrees to participate and cooperate with City and its agents to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed to satisfy the requirements of AB 939.

8.5.6 Implementation of Additional Diversion Services

In the event City does not meet the current diversion goal of 50% imposed by AB 939 with respect to all waste generated in the Franchise Area, City may direct Contractor to perform additional services (including the implementation of new diversion programs) or modify the manner in which it performs existing services, and Contractor agrees to do so at no additional charge. Contractor shall seek City approval for the implementation of new diversion programs, which City may deny, approve or conditionally approve in its reasonable discretion. Pilot programs and innovative services which may entail new Collection methods, and use of new or alternative waste processing and disposal technologies are included among the kinds of changes which City may direct.

8.6 Additional Services

As part of the consideration for entering into this Agreement, Contractor shall provide the following additional services at no charge, and shall not adjust its rates to Customers to offset costs incurred in providing any of the following services:

8.6.1 City Sponsored Events

Contractor shall provide Solid Waste Handling Services for up to six (6) annual events sponsored by the City within the City Limits. In fulfilling the obligations created by this Section, Contractor shall provide Containers to Collect and dispose of all Solid Waste including cardboard waste boxes with liners, Bins or Rolloff Boxes as applicable, as well as Containers to Collect source-separated Recyclable Materials.

8.6.2 Monitoring and Cleaning of Bin Enclosures

Contractor shall, free of charge to the City, clean out any overflowing Bins or Bin enclosures within the Franchise Area within twenty-four (24) hours of being requested to do so by City. The Customer shall be notified of such cleaning, and shall be subject to the requirements set forth in Section 8.1.12, including the possible imposition of an overage charge.

8.6.3 Public Service Calls From City Departments

Contractor shall, free of charge and within one (1) business day, respond to calls from City's Maintenance and Code Enforcement Divisions and from authorized representatives of the Orange County Fire Authority ("OCFA"), to provide Containers for and/or dispose of Bulky Items and other Solid Waste as a result of illegal or unauthorized dumping, or other Code enforcement matters, occurring within City. Contractor shall respond to up to twenty (20) such calls each month, and provide Solid Waste Handling Services in connection therewith, free of charge. Contractor may charge City for Solid Waste Handling Services associated with calls in excess of the above noted twenty (20) per month at rates not exceeding the maximum rates set forth in Exhibit A relating to Bulky Item Collection for Single Family Dwellings, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. Contractor shall create a specific work order in response to each call and/or written request received from City departments and OCFA representatives and shall provide City with a summary thereof in connection with the audit required by Section 28.4 hereof. Said summary shall include but not be limited to the date, time, hours spent, type of items Collected, and what, if any, charge was incurred by City.

Contractor agrees that if requested to provide such Solid Waste Handling Services in connection with abatement activities for which reimbursement is sought from the property owner by City through abatement liens or otherwise, Contractor will provide billing information sufficient for City to include it in its liens, and Contractor will be paid at such time as the abatement lien is paid, or reimbursement is otherwise obtained by City from the property owner. Upon receipt of a call for service from City made pursuant to this Section, Contractor shall advise City within four (4) hours as to when service will be provided, and unless otherwise agreed by City service shall be provided within twenty-four (24) hours.

8.6.4 Holiday Trees

Contractor shall, free of charge, Collect holiday trees placed out for such Collection by Single Family Dwelling Customers and by Multi-Family Dwelling Customers receiving Cart service on each of the three weeks after December 25 of each year as part of regularly scheduled Collections. Contractor shall, free of charge, accept holiday trees delivered to the Sunset Facility by Customers receiving Bin Service. In addition to providing for a holiday tree Collection Bin at the Sunset Transfer Station, Contractor shall, subject to City approval, provide a Bin for holiday tree Collection at the City Yard. All such trees shall be diverted from the landfill by deposit at a composting facility or grinding operation. Contractor will not be required to divert from landfill disposal holiday trees with flocking, tinsel, or numerous ornaments.

8.6.5 Local Buy-Back Center

Contractor shall operate a buy-back center, at a location in the City that is mutually acceptable to the Parties, for use by City residents. The facility will be open from 10 a.m. to 5 p.m. Tuesday-Saturday. The buy-back center will accept CRV materials (aluminum cans, plastic bottles, glass bottles and other beverage containers) for reimbursement of CRV value, as well as old newspapers, cardboard, mixed paper and electronic waste for donation. The buy-back facility will also accept Recyclable Material Collected by the Orange County Conservation Corps.

8.6.6 Shredding Service

City may direct Contractor to provide an on-site mobile shredding service for use by City residents (a "Shredding Event") up to three (3) times per year. Each Shredding Event shall be provided at dates, times, and locations designated or approved by the City Manager, in his or her reasonable discretion, and should be for a minimum of three (3) hours in duration. In the event inclement weather prevents a Shredding Event from occurring, Contractor shall reschedule the Shredding Event to a date, time and location designated or approved by the City Manager. Each Shredding Event shall be conducted at Contractor's sole cost and expense, utilizing equipment, personnel, and methods appropriate for such event, as approved by the City Manager. Prior to each Shredding Event, Contractor shall coordinate with City staff and/or public safety personnel to make arrangements for safe, convenient, and effective access to and participation by City residents in the Shredding Event, and shall procure all necessary insurance coverage. Each Shredding Event shall be designed to accommodate up to a maximum of five (5) "Bankers" boxes of paper or other media suitable for shredding from each Dwelling Unit within the Franchise Area that is participating in the Shredding Event. Residents participating in the Shredding Event must be able to visually observe the materials they delivered to the Shredding Event. Contractor shall publicize each Shredding Event through methods, and using materials, approved by the City Manager, at no cost to the City. In connection with each Shredding Event, Contractor shall provide appropriate containers for residents to donate unwanted or slightly used clothing and other household items to a charity approved by City.

8.6.7 Consultation in Connection with Solid Waste and Related Matters

Contractor shall provide consulting services for City at no charge in connection with Solid Waste, Hazardous Material and Recycling related issues. Contractor's obligations in this

regard shall include, without limitation, reviewing and commenting on development applications when requested to do so by City.

8.7 Special Services

Contractor may provide special pickup procedures or services in addition to the services described herein for Customers who request or require such services at reasonable rates established between Contractor and the Customer. Any dispute regarding the rate for special services may be referred to the City Manager for resolution in accordance with Section 10.8.4. Contractor shall verbally notify the City Manager of any such services prior to such time as they are provided in order to allow the City an opportunity to conduct necessary inspections and impose appropriate regulations as needed.

SECTION 9. MINIMUM STANDARDS FOR CONTRACTOR'S SOLID WASTE HANDLING SERVICE COLLECTION VEHICLES

9.1 General

Contractor shall provide vehicles for the Collection of Solid Waste ("Collection Vehicles") that are sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Contractor is expressly obligated to provide such Collection Vehicles and routes as are required to meet the service standards set forth herein. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies. Upon or prior to the Effective Date of this Agreement, and prior to the start of any extension period of this Agreement, Contractor shall provide City with a report containing the information required under South Coast Air Quality Management District's Rule 1193(d)(7).

9.2 Air Quality/Fuel Requirements

Contractor's Collection Vehicles shall comply with all rules and regulations of the South Coast Air Quality Management District, the Air Resource Board, and any other regulatory body that may be in effect during the Term of this Agreement, as well as other federal, state and local laws and regulations that may be enacted during the Term of this Agreement. Contractor's Collection Vehicles shall meet or exceed such air quality standards as may be adopted by the forgoing regulatory bodies during the Term. Contractor's Collection Vehicles shall comply with the requirements in the South Coast Air Quality Management District's ("SCAQMD") Rule 1193.

9.3 Specific Requirements

Each Collection Vehicle utilized by Contractor in the performance of this Agreement shall meet the following minimum standards:

- (A) Each Collection Vehicle shall be fueled by clean air technology in accordance with Applicable Laws.

(B) Each Collection Vehicle shall be registered with the California Department of Motor Vehicles.

(C) Each Collection Vehicle shall be inspected regularly by Contractor to ensure it meets the requirements of the California Vehicle Code and the California Highway Patrol. Contractor shall provide copies of its Biannual Inspection of Terminal inspection reports to City within 30 days of its receipt of such reports and shall make all records related to its Collection Vehicles, including Contractor's maintenance records, available to City upon request by the City Manager.

(D) Each Collection Vehicle shall be equipped with devices capable of covering every open section of the Collection Vehicle in which Solid Waste may be placed and, while operating upon the public rights-of-way, shall be covered so as to prevent any Solid Waste from falling or being blown or otherwise dislodged from the Collection Vehicle.

(E) Each Collection Vehicle shall be continuously maintained so as to both: (1) meet the highest industry standards with regards to efforts to prevent liquid from leaking and to the degree possible ensure each Collection Vehicle is "watertight" and "leak-proof" and, (2) at all times comply with the provisions of all Applicable Laws, including, without limitation, the Vehicle Code and any applicable NPDES permit, with regard to materials leaking from Collection Vehicles. Contractor shall be responsible to promptly clean any spillage or Solid Waste that leaks or otherwise escapes the Collection Vehicle.

(F) As frequently as determined necessary by the City Manager, each Collection Vehicle shall be painted and shall have routine body work performed so that such vehicles do not become unsightly, as determined by the City Manager.

(G) Contractor's name, local or toll free telephone number, and a vehicle number shall be visibly printed or painted in letters not less than five (5) inches in height on both sides of each Collection Vehicle. Any other information or signage printed, painted, or displayed on Contractor's Collection Vehicles, when such vehicles are providing Collection services within City Limits, shall be subject to approval by City.

(H) Each Collection Vehicle shall be maintained in a clean and sanitary condition both inside and out and shall be washed at least once every seven (7) calendar days and steam cleaned on a regular basis.

(I) Each Collection Vehicle shall carry a broom, shovel, and operable fire extinguisher, and shall be equipped with a communication device sufficient to allow the driver to communicate directly with Contractor's dispatcher and/or main office.

(J) Each Collection Vehicle shall be kept in good repair and working order, and shall be equipped with appropriate safety equipment, including any new safety related technologies that become standard in the waste industry, and at a minimum shall have a video monitor-based back-up system, or its equivalent. Contractor shall keep a sufficient supply of replacement parts and equipment on hand to ensure adequate vehicle

maintenance and timely and continuous performance of the Solid Waste Handling Services contemplated by this Agreement.

(K) Contractor shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions upon Collection Vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall keep accurate records of all Collection Vehicle maintenance and repair, recorded according to date and mileage, including signed verifications that repairs and maintenance have been properly performed, and shall make such records available to City upon request.

(L) No Collection Vehicle shall be utilized if it is leaking brake, hydraulic, or other fluids, and Contractor shall clean up any leaks or spills from its Collection Vehicles per the NPDES permits in effect at the time. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such cleanup efforts.

(M) Upon request, Contractor shall furnish City a written inventory of all equipment, including Collection Vehicles, used in providing Solid Waste Handling Services pursuant to this Agreement. This inventory shall list all equipment by manufacturer, ID number, date of acquisition, type and capacity.

(N) Contractor shall utilize Collection Vehicles of a size, weight, nature, and type so as to not be unreasonably intrusive on the community with respect to noise, emissions, maneuverability, safety, and other factors, and to avoid or minimize pavement damage and wear and tear of the street or adjacent properties, as approved by the City Manager.

(O) Contractor shall not load Collection Vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local laws or regulations. Noise levels of equipment used for Collection shall not exceed 75db (seventy-five decibels) when measured at a distance of twenty-five (25) feet from the Collection Vehicle, five (5) feet from the ground.

(P) The average fleet age, when applied to all Collection Vehicles used by Contractor in the Franchise Area, shall be no more than ten (10) years of age at any time during the Term, nor may any Collection Vehicle be purchased for use in the Franchise Area that is over seven (7) years of age at the time of purchase. For purposes of the average fleet age requirement, Collection Vehicles refurbished to specifications approved by the City Manager shall be considered as new when placed back into service.

9.4 Costs of Operation and Damages

Contractor shall be responsible for any costs incurred in connection with ensuring all Collection Vehicles comply with all Applicable Laws, including, without limitation, any such

laws and regulations that may now exist or hereinafter be adopted relating to noise, fuels, emission standards, or weight limits.

9.5 City Inspection

City may cause or require any Collection Vehicle used in performance of this Agreement to be inspected and tested at any reasonable time and in such manner as may be appropriate to determine that the Collection Vehicle is being maintained in compliance with the provisions of this Agreement.

9.6 Correction of Defects and Removal of Vehicles from Use within City

Contractor agrees to immediately remove from service, and replace or repair, to the City's satisfaction, any Collection Vehicle which City determines to be of unsightly appearance, unsafe, unsanitary, leaking, out of compliance with any law or regulation or this Agreement, or otherwise in an unsatisfactory operating condition; and any such Collection Vehicle shall not be returned to service until the City Manager gives his written consent for its return.

SECTION 10. CONTRACTOR'S SOLID WASTE HANDLING SERVICE PERSONNEL

10.1 Uniforms

Each of Contractor's Collection employees shall wear a clean uniform bearing Contractor's name.

10.2 Identification of Employees

Contractor shall provide identification badges, cards or similar devices, for all of its employees, and all authorized subcontractors, who may make personal contact with residents of the City. City may require Contractor to notify Customers yearly, or more frequently if determined necessary by City, of the form of said identification.

10.3 Employee List

Contractor shall provide a list of current employees and authorized subcontractors to City upon request.

10.4 Driver's License

Each employee operating a Collection Vehicle as part of his or her duties shall, at all times, carry a valid operator's license for the type of Collection Vehicle he or she is operating. All employees who may have contact with Customers in the course of performing their duties shall possess the ability to communicate effectively with Customers.

10.5 Screening of Field Employees

Contractor shall make reasonable efforts to determine if its employees working in the field (i.e., drivers of Collection Vehicles, and employees otherwise involved in Collection at

Customer Premises) have been convicted of a felony, and shall identify any such employees known to it to City. City shall have the ability to require that any employee so identified by Contractor not work in the field within City.

10.6 Discontinued Use of Unsatisfactory Employees

No employee shall continue to have any involvement whatsoever with regard to any work in any way relating to or arising from this Agreement if City gives notice to Contractor that such employee is determined by City to be discourteous, disorderly, inefficient, or otherwise objectionable (provided the term “otherwise objectionable” shall not permit City to “ban” an employee for reasons that violate public policy; and, further, City shall give a reason for requesting the “ban” of any employee from engaging in work related to this Agreement.)

10.7 Training and Legal Compliance

Contractor shall provide operating and safety training that meets minimum OSHA standards for all personnel, and shall comply with all laws and regulations applicable to its employees and personnel. Contractor shall establish and vigorously enforce an education program designed to train Contractor’s employees in the identification of Hazardous Wastes, and will provide employees with appropriate literature to leave behind at Premises which improperly place Hazardous Wastes for Collection along with Solid Waste.

10.8 Customer Service

10.8.1 Office Hours

Contractor shall maintain a local office within 25 miles of the City Limits for communication with the public that, at a minimum, will be open from 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 p.m. Saturday, holidays excepted. At least one responsible and qualified representative of Contractor, capable of communicating in English, Spanish and Mandarin, shall be present and available at said office during all times that an office is required to be open as noted above (“Office Hours”), for personal communication with the public regarding Billings (including the acceptance of in person Bill payments, Saturdays excepted), complaints, customer service inquiries, and other Customer inquiries, and a similarly qualified person shall be available for communication with the public by phone during any times other than Office Hours when Collection is occurring.

10.8.2 Telephone Customer Service Requirements

10.8.2.1 Toll Free Number

Contractor shall maintain a toll free telephone number that rings at an office at all times during Office Hours. English, Spanish and Mandarin speaking personnel will be available during Office Hours to assist Customers with telephonic inquiries. Contractor shall have the ability (through the use of outside resources or otherwise) to communicate with Customers who only speak Mandarin or Spanish to ensure their inquiries, questions, complaints and other matters are dealt with in a reasonably timely fashion. All such personnel shall be polite and responsive, and shall be sufficiently knowledgeable, and have the authority to respond and/or advise Customers seeking assistance. Contractor’s telephone system shall be adequate to handle

the volume of calls typically experienced on the busiest days. Contractor shall provide City with a 24-hour emergency number to a live person, not voice-mail.

10.8.2.2 Call Responsiveness

Contractor shall make reasonable attempts to answer all phone calls within five (5) rings. If a call has been placed on hold for three (3) minutes, the caller will either be switched to a message center which shall be responsible to obtain the caller's address and phone number, or a Customer service representative will obtain the Customer's address and a number at which the call can be returned. Contractor shall make at least three (3) attempts within the next business day to return the call, with the first such attempt not more than one (1) hour after the caller leaves the message. If Contractor is unsuccessful in contacting the Customer after following this procedure, it shall send a letter to the caller indicating its efforts.

10.8.3 Complaint Documentation

All service complaints shall be directed to Contractor. Contractor shall log all complaints received and said log shall include the date and time the complaint was received, the name, address and telephone number of the complaining party, a description of the complaint, the name of the employee recording the complaint and the action taken by Contractor to respond to and remedy the complaint.

All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day (Monday through Friday) of receipt. Contractor shall log action taken to respond to and remedy the complaint.

Daily logs of complaints shall be retained for a minimum of twenty-four (24) months, and shall be available to City at all times upon request.

All Customer service records and logs kept by Contractor shall be available to City upon request. City shall, at any time during regular Office Hours, have access to Contractor's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints. Contractor shall provide to City on a monthly, quarterly, and annual basis, a complaint log, in a form satisfactory to the City Manager, that includes all of the complaints logged pursuant to this Section, the complainant and the resolution.

10.8.4 Resolution of Customer Complaints

Disputes between Contractor and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City Manager. The City Manager's decision shall be final and binding. Should Contractor and its Customers not be able to establish a mutually acceptable fee to be charged for special services as set forth in Section 8.8, the matter shall be dealt with pursuant to this Section, and shall be determined by the City Manager. The City Manager's decision shall be final.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Contractor. Nothing in this Section is intended to affect the remedies of third parties against Contractor.

10.8.5 Government Liaison

Contractor shall designate in writing a "Government Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer complaints. City shall have the right to approve Contractor's choice for a liaison. It is anticipated that the Government Liaison will regularly attend City events involving community outreach programs and will routinely attend City Council meetings.

10.9 Education and Public Awareness

On or before January 1 of each calendar year during the Term hereof, Contractor shall submit for City Manager's approval a written proposal for programs to be implemented in the upcoming year which are designed to provide information to and educate the public regarding Recycling, composting, and waste reduction and diversion, and which are consistent with City's SRRE and HHWE, as well as any related requirements of AB 939. Contractor's proposal shall include a budget for such programs that shall be in an amount equal to One Dollar and Fifty-Seven Cents (\$1.57) per Dwelling Unit located within the City Limits as of January 1 of the upcoming year. Contractor shall amend, rectify or otherwise change any aspects of said annual proposal that do not meet with the City Manager's reasonable approval. Prior to the end of each calendar year during the Term hereof, Contractor shall pay to City an amount equal to the difference between the amount that Contractor was required to expend and the amount Contractor actually expended pursuant to this Section 10.9 during said year.

10.9.1 General

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of AB 939, AB 341, and AB 1826. Accordingly, Contractor agrees to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse and Recycle Solid Waste and to cooperate fully with City in this regard.

10.9.2 Written Program Materials

Contractor shall maintain a program of providing information relevant to the need and the methods to reduce, reuse and Recycle Solid Waste, and Contractor, upon request from City, may include such information along with Bills provided to Customers. All public education materials shall be approved in advance by City. Contractor shall keep a record of all promotional and public education materials utilized, and shall provide quarterly reports summarizing its public outreach and education efforts.

10.9.3 Public Outreach

At a minimum, Contractor shall conduct school assemblies and promote Recycling through presentations and educational materials to the Chamber of Commerce, homeowners associations, construction contractors and other civic groups. Contractor shall also provide articles on Recycling for local newsletters.

10.9.4 On-going Education Requirements

In order to promote public education, in addition to any other materials it develops, Contractor shall create the following public education materials and programs at its expense, which will be distributed as indicated below. All of these materials and programs shall be produced and/or available in English, Spanish and Mandarin languages, and all written materials shall be approved by City in advance of distribution, and shall bear the City seal, unless otherwise approved by the City:

10.9.4.1 Annual Notices

Not less than once each year during the Term of this Agreement, Contractor shall prepare and distribute to each Customer a brochure providing relevant information about Contractor's services, including, at a minimum: information regarding access to and use of available Solid Waste Handling Services; Collection schedules; holiday Collection schedules; information about mandatory commercial Recycling and program offerings; Contractor's Customer service numbers; procedures to begin and terminate services; and information promoting and explaining available programs, such as Recycling, Green Waste, Holiday Tree and Bulky Item Collections, the availability of Household Hazardous Waste, and "e-waste" Collection, and the proper handling and disposal of such wastes.

10.9.4.2 How-To Brochure

Contractor will prepare and distribute a brochure packet to new Customers when they start Solid Waste Handling Service. This packet will contain updated information on how to use the Contractor-provided Carts, when, where and how to place Solid Waste for Collection, and who to contact with Solid Waste Handling Service or Billing questions.

10.9.4.3 Corrective Action Notice

Contractor shall develop a corrective action notification form for use in instances where a Customer sets out inappropriate materials for Collection that explains the appropriate manner for disposal of such items.

10.9.4.4 Contractor Representative

Contractor shall retain on its staff an individual who shall as part of his or her job function routinely visit civic groups, school assemblies, and homeowners' associations, to promote and explain the Recycling and other programs that Contractor offers, and participate in demonstrations, and civic events.

10.9.4.5 Web Site Page

Contractor shall dedicate one page of its web site to City services, which shall include at least the following information: a listing of contact names and numbers for Customer Service; Collection schedules, including Holiday schedules; available programs, including Recycling, Green Waste, holiday Tree and Bulky Item Collections; information about mandatory commercial Recycling and program offerings; and the procedures to begin and terminate services. During the first six (6) months following the implementation of new Solid Waste

handling Services hereunder, this web page shall also provide information explaining the new service, and the proper use of Carts. Contractor shall assist the City in establishing a link to this web page from the City's web site.

10.9.5 Plastic Bag Recycling Education

Contractor shall include in its educational and outreach materials provided to Customers pursuant to this Agreement information regarding the technology for Recycling plastic bags and plastic wrap, and instructing Customers to return plastic bags to grocery and other retail stores that accept plastic bags for Recycling.

SECTION 11. CONTRACTOR'S CONSIDERATION

In addition to any other consideration set forth herein, as part of its consideration for entering into this Agreement, and for the exclusive franchise, right and privilege to provide Solid Waste Handling Services within City as specified herein, Contractor shall provide the following:

11.1 Reimbursement of Renegotiation Costs

Contractor shall reimburse the City for its staff expenses and out-of-pocket costs (including, specifically and without limitation, legal fees) incurred in connection with negotiating this Agreement with Contractor. Payment of such costs shall be due within 30 days following Contractor's receipt of an invoice for such costs from City.

11.2 Administrative Cost Reimbursement

Contractor shall make a payment to City in the amount more fully set forth in this paragraph intended to defray its administrative costs related to this Agreement (the "Administrative Cost Reimbursement"). The amount of the annual Administrative Cost Reimbursement shall be equal to the City's actual legal fees incurred in the administration of this Agreement, including fees and costs associated with analyzing new legislation, considering requests from Contractor (including specifically, without limitation, requests for rate increases), and otherwise analyzing issues that arise in connection with this Agreement. Invoices for the Administrative Cost Reimbursement will be provided to Contractor by City and shall be due to City within thirty (30) days of the date such invoice is mailed by City. If any Administrative Cost Reimbursement is not paid by Contractor within thirty (30) days after the above stated due date, and in addition to any other remedy provided by law, Contractor shall pay to City a penalty in an amount equal to ten percent (10%) per month, or portion thereof, of the amount owing until paid.

11.3 Franchise Fee

Contractor shall pay to City, a franchise fee equal to five percent (5.0%) of Contractor's annual Gross Receipts each year, or portion thereof, during the entire Term of this Agreement (the "Franchise Fee"). Said Franchise Fee shall be paid to City quarterly, within forty-five (45) days following the end of each quarterly period. Should any such due date fall on a weekend, Holiday, or other day in which the City's business offices are closed, payment shall be due on the first day thereafter in which the City's business offices are open. The amount of each

payment shall be equal to five percent (5.0%) of Contractor's Gross Receipts received in the calendar quarter preceding the date payment is due. The Franchise Fee due hereunder shall apply to Gross Receipts of Contractor collected after the expiration of the Term hereof relating to Contractor's performance during the Term hereof. Franchise Fees shall be accompanied by a statement certified by an officer of Contractor attesting to the accuracy of the amounts paid, and setting forth the basis for their calculation in a manner acceptable to City. Each Franchise Fee payment shall be accompanied by the applicable quarterly report required pursuant to Section 23.2 of this Agreement.

11.4 Services at City Facilities

Contractor shall provide Solid Waste Handling Services (including Recycling services, and Green Waste Collection) at all Premises owned and/or operated by the City, at no cost to City, and shall provide Containers for such Solid Waste Handling Service as City deems appropriate for each of its various Premises (i.e., Carts, Bins or Rolloff Boxes); provided however, Contractor shall not be required to provide such Solid Waste Handling Services at no cost in connection with construction or demolition projects at City facilities. Such Solid Waste Handling Services shall be provided for all existing City facilities, as they may be expanded from time to time, as well as all new or additional facilities acquired/constructed during the Term hereof. Contractor shall carry out its obligations pursuant to this provision in a manner, and to a degree, approved by the City Manager.

11.4.1 Litter Modules

Contractor agrees to provide, install and maintain, at Contractor's expense, up to one hundred eighty (180) Litter Modules (i.e., trash cans or receptacles), inclusive of the Litter Modules previously provided by Contractor and still in use in the City, in a manner, and to a degree, as determined by the City Manager. The design of the Litter Modules shall be subject to approval by the City Manager. The Litter Modules will be placed along or upon City's streets, rights-of-way, parks, or other property as specified by the City Manager. Notwithstanding the foregoing, the City Manager and Contractor may agree, in lieu of one (1) or more of the standard Litter Modules required to be installed and/or replaced pursuant to this Section, to have Contractor install solar-powered or other alternate energy-powered receptacles (each, a "Non-Standard Receptacle"). Prior to installation of any such Non-Standard Receptacles, the City Manager and Contractor shall determine the number of standard Litter Modules for which Contractor shall receive a "credit" by providing such Non-Standard Receptacle(s), which credit shall be based on the cost Contractor incurs to install the particular Non-Standard Receptacle, as compared to the cost Contractor incurs to install a standard Litter Module. For example, if it costs Contractor \$400 to install a standard Litter Module and \$1,200 to install a particular Non-Standard Receptacle, Contractor shall receive a credit for installing three (3) Litter Modules for every one (1) of such Non-Standard Receptacle Contractor installs. Contractor shall, at Contractor's expense, repair, maintain or replace such Litter Modules or Non-Standard Receptacles as needed and directed by City. Contractor shall clean up all litter and debris within a ten (10) foot radius of all Litter Modules and Non-Standard Receptacles in the City during its regularly-scheduled Collections, and as requested by the City. Without limiting the foregoing in any way, Contractor shall provide Solid Waste Handling Services for Litter Modules at least twice per week, and for Non-Standard Receptacles as reasonably necessary and pursuant to a

schedule approved by the City Manager. Contractor shall dispose of all Solid Waste Collected from Litter Modules and Non-Standard Receptacles at a Materials Recovery Facility (“MRF”).

SECTION 12. CHARGE FOR LATE PAYMENTS

In the event Contractor fails to timely make any of the payments provided for in this Agreement (whether reimbursements, Franchise Fees, payments of funds collected in connection with Billing services, or otherwise), Contractor shall pay to City, as additional consideration, a sum of money equal to five percent (5%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting for, and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving the revenue. In addition, any amounts not paid to City by Contractor within sixty (60) days of the due date shall be subject to interest in the amount of ten percent (10%) per annum, calculated on a daily basis for each day such sums remain past due.

SECTION 13. CONTRACTOR’S BILLING SERVICES AND SYSTEMS

13.1 Billing

Contractor shall provide services pursuant to this Agreement at rates it sets, charges to, and collects from Customers; provided, however, Contractor’s rates shall not exceed the maximum rates set forth in Exhibit A, which sets out the maximum rates that may be charged by Contractor for the various different service options that may occur hereunder, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. Contractor shall at its own expense be solely responsible for the Billing to and collection from every Customer for all its Solid Waste Handling services and shall provide itemized Bills to each Customer distinctly showing charges for all classifications of services, including charges for late payments. Contractor acknowledges that it, and not Customers, is to pay a Franchise Fee and the other fees noted herein to City as consideration for this Agreement. Accordingly, Contractor’s Bills shall not include separate itemization of a “Franchise Fee” or other similar designation relating to fees which Contractor is required to pay to City. Contractor shall reproduce and include in any Billing, at no additional cost, one page informational “inserts” provided by City.

Billings may be made in advance for all Customers, except that Billings shall be made in arrears on a monthly or quarterly basis for special charges including the overage fee or contamination fee. Premises ordering service after the first of the month or canceling service prior to the end of the month shall be charged on a prorated per-pickup basis.

13.2 Unoccupied Premises

During any time when a Premises is unoccupied for more than ninety (90) days, and during which the Solid Waste Collection Services provided by Contractor are not utilized by the Customer at the Premises, Contractor shall not Bill such Premises for Solid Waste Handling Service. The Customer at any such Premises shall be responsible to provide reasonable evidence to Contractor, pursuant to such guidelines as the City Manager is hereby authorized to develop, demonstrating the Premises was vacant for the period in question. Such Customers shall be

entitled to a refund from Contractor for any amounts paid to Contractor for each ninety (90) day period during which the vacancy exists. Any Customer grievance regarding a claim that a Premises was unoccupied and received no Solid Waste Handling Service, and hence should not be Billed for a given period pursuant to this Section, may be appealed by the Customer to the City Manager whose decision shall be final.

13.3 Delinquent Accounts

Any Solid Waste Handling Service account unpaid by the due date listed on the Billing statement shall be deemed delinquent. Except to the extent otherwise provided herein, it shall be the sole responsibility of Contractor to take any authorized measures to collect any delinquent sums owed. Any delinquent fees or Solid Waste Handling Service charges to be imposed in connection with delinquent accounts shall be set by Contractor and be subject to City Manager review.

Contractor may discontinue Solid Waste Handling Service to any Customer whose account is delinquent in the manner as set forth in this Section. Customers who have not remitted required payments within thirty (30) days after the date of Billing shall be notified on forms approved by the City Manager. Said forms shall contain a statement that Solid Waste Handling Services may be discontinued fifteen (15) days from the date of notice if payment is not made before that time. If payment is not made by the expiration of said fifteen (15) day period, Contractor may discontinue Solid Waste Handling Services forty-eight (48) hours thereafter.

Contractor shall resume Solid Waste Handling Services on the next regularly scheduled Collection day for any Customer whose Solid Waste Handling Service is discontinued upon receipt of payment of all outstanding charges, including delinquent fees, and any fees for redelivery of equipment (which may be imposed in accordance with the maximum rates set forth in Exhibit A), or at such sooner time as directed to do so by City. Contractor may not charge for Solid Waste Handling Services during any period in which Solid Waste Handling Service was suspended. Any delinquent fees or service charges to be imposed in connection with delinquent accounts shall be set by Contractor and is subject to City Manager approval.

A deposit equal to the maximum rate for one month's Solid Waste Handling Services as set forth in Exhibit A, as such rates may be amended from time to time, may be required of accounts which have been discontinued for non-payment prior to re-instituting Solid Waste Handling Service at such accounts. Contractor shall provide City with reasonable advance notice prior to suspending Solid Waste Handling Service to any Customer and City reserves the right to require Contractor continue to provide Solid Waste Handling Service to any Customer to, among other things, avoid negatively impacting public health or safety.

13.4 Minimum Requirements for Billing Statements

In addition to any other pertinent data, Billing statements mailed by Contractor shall be printed to contain the following information, and the language contemplated for compliance with this requirement shall be subject to the City Manager's approval:

- (A) A "statement date" indicating the date the Bill is generated and mailed.

(B) For Cart service: the service address associated with the account, the billing address, an itemized quantity of each type of Solid Waste Handling Service the Customer receives, and the maximum rate charged for each type of Solid Waste Handling Service. Customers should be able to determine from the Bill the types of Solid Waste Handling Services they are receiving and the rates charged for each individual Solid Waste Handling Service.

(C) A notice to Customers that the Customer's account will become delinquent if payment is not received by the 30th day following the statement date, and a notification of the amount of fees that will be imposed and the potential for Solid Waste Handling Services interruptions if payments are not received by the specified date and time.

(D) An advisement to Customers that payment can be made in the following manner:

(1) by mailing payment to Contractor at such address as Contractor may designate; or

(2) by automatic withdrawal from a checking account;

(3) by major credit card or Automated Clearing House on-line (i.e., via the Internet); or

(4) in person at Contractor's local office pursuant to Section 10.8.1 by cash, check, credit card or other acceptable forms of payment, including through Contractor's "WM ezPay" system.

(E) An advisement that inquiries relating to Solid Waste Handling Services should be directed to Contractor, including an address, phone number and internet site, for such inquiries.

13.5 Billing System

13.5.1 Computerization of Account Information

Contractor shall provide and maintain, at its expense, computer equipment sufficient to operate pertinent computer programs and otherwise provide the services required by this Section. Contractor shall create, at its own expense, computer programs sufficient to operate a computerized Billing system, permanently maintain all account records and otherwise meet the requirements of this Section.

13.5.2 Minimum Computer Programming Requirements

In addition to any other requirements set forth herein, the programs created by Contractor to operate and maintain the Billing system shall at a minimum be able to perform the following functions:

(A) create a permanent record of any adjustment to a Customer's account;

(B) work in connection with a backup system such that all Customer account data and records are protected from a computer failure and permanently preserved on not less than a daily basis; and

(C) allow Customers to make payments on-line (i.e., via the Internet) by a major credit card or ACH.

13.5.3 Billing Inquiries

All Billing inquiries shall be entered into the computerized Billing system. Contractor's computer programs shall keep a permanent record of all Billing inquiries and all adjustments to Customer Bills resulting therefrom.

13.5.4 Distribution of Public Information

If requested to do so by City, and at no charge to City, Contractor shall insert any printed material prepared by City into its Billing statements for delivery to its Customers. City shall not request Contractor to include any printed material in its Bills if such material is of a size, shape, or weight that would increase Contractor's postage costs or if such material does not fit into the envelopes utilized by Contractor to mail the Bills. Any printed material to be included in the Bills to be mailed by Contractor shall be provided to Contractor within a reasonable time in advance of Contractor's scheduled mailing date, such that the insertion of such material into Billing envelopes does not delay their scheduled mailing date.

13.6 Payment, Accounting Systems

13.6.1 Collection and Processing of Payments

13.6.1.1 Accounting and Deposit of Funds

All payments received by Contractor shall be appropriately credited to Customer accounts, deposited in a bank account and accounted for in a businesslike manner utilizing generally accepted accounting principles.

13.6.1.2 Allocation of Funds

With respect to payments received from each Customer, unless a Customer specifically directs a different allocation, funds shall be allocated first to outstanding charges for Solid Waste Collection, then to any related delinquency fees or other administrative charges, up to the amount of any outstanding balance. Any overpayment shall be credited to future Bills in the same sequence, or returned to Customers as appropriate.

SECTION 14. FAITHFUL PERFORMANCE

14.1 Surety

Contemporaneously with execution of this Agreement, as security for Contractor's faithful performance of all obligations of this Agreement, Contractor shall provide a surety

mechanism (the "Surety") as more fully defined below in the amount of Five Million Dollars (\$5,000,000.00). The Surety may be comprised of either a performance bond or an irrevocable letter of credit, or a combination of both. If a letter of credit is utilized to satisfy some or all of the Surety requirements, it shall be drawn upon a financial institution with an office within fifty (50) miles of City, and otherwise in a form acceptable to the City Attorney. The performance bond, if any, shall be issued by a duly authorized corporate surety company authorized to do business in California, and in a form acceptable to the City Attorney. The cost of the Surety shall be the sole responsibility of Contractor. The Surety shall be released within ninety (90) days after both (i) the expiration of the Term of this Agreement, and (ii) Contractor's satisfactory performance of all obligations hereunder.

14.1.1 Forfeiture of Surety

In the event Contractor shall for any reason become unable, or fail in any way, to perform as required by this Agreement, City may declare a portion or all of the Surety, as may be necessary to recompense and make whole the City, forfeited to the City. Upon partial or full forfeiture of the Surety, Contractor shall restore the Surety to its original amount within thirty (30) days of the City's notice to do so. Failure to restore the Surety to its full amount within thirty (30) days shall be a material breach of this Agreement.

14.1.2 Use of Surety by City

Notwithstanding any provision hereof to the contrary, thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, either the letter of credit or performance bond comprising the Surety may be utilized by City for purposes including, but not limited to: (1) payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City, including specifically liquidated damages; and (2) reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor.

14.1.3 Replacement Letter of Credit

City may draw upon the entire letter of credit (if any) utilized to meet Contractor's obligations pertaining to the Surety, and convert it to a cash deposit, if Contractor fails to cause the letter of credit to be extended or replaced with another satisfactory letter of credit no later than sixty (60) days prior to its expiration.

SECTION 15. INSURANCE COVERAGE

Contractor shall procure and maintain during the entire Term of this Agreement the following types of insurance and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Contractor's performance hereunder or the actions or inactions of any of Contractor's officers, agents, representatives, employees, or subcontractors in connection with Contractor's performance. The insurance requirements hereunder in no way limit Contractor's various defense and indemnification obligations or any other obligations as set forth herein.

15.1 Comprehensive General Liability

Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$10,000,000 per occurrence and \$10,000,000 annual aggregate for liability arising out of Contractor's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to:

(1) Name the City of Irvine and its employees, representatives, officers and agents (collectively hereinafter "City and City Personnel") as additional insured for claims arising out of Contractor's performance of this Agreement.

(2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

15.2 Automobile Liability Insurance

(A) with a limit of liability of not less than \$10,000,000 each occurrence and \$10,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto." Such insurance shall be endorsed to:

(1) Name the City of Irvine and its employees, representatives, officers and agents as additional insured for claims arising out of Contractor's performance of this Agreement.

(2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

15.3 Workers' Compensation Insurance

(A) in accordance with the Labor Code of California and covering all employees of the Contractor providing any service in the performance of this agreement. Such insurance shall be endorsed to:

(1) Waive the insurer's right of Subrogation against the City and City Personnel with respect to the performance of Contractor's obligations under this Agreement.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement unless your insurance carrier is the State of California Insurance Fund (SCIF) and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.

15.4 Environmental Pollution Control Insurance

Contractor shall maintain either an endorsement to its general liability policy, or a separate policy of insurance covering environmental pollution and contamination that names the City as an additional insured. Said coverage shall be in the amount of not less than Two Million Dollars (\$2,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, and shall substantially comply with all other provisions set forth in Section 15.1.

Contractor's completion of the form attached hereto as Exhibit 1 shall be a condition precedent to Contractor's rights under this Agreement. Should Contractor certify, pursuant to Exhibit 1, that, in the performance of the work under this Agreement, it shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, Contractor shall nonetheless maintain responsibility for requiring that any subcontractors performing work under this Agreement have and maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the work performed under this Agreement.

15.5 Endorsements

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

Additional Insured Endorsements shall not:

- (A) Be limited to "Ongoing Operations"
- (B) Exclude "Contractual Liability"
- (C) Restrict coverage to the "Sole" liability of Contractor
- (D) Contain any other exclusion contrary to the Agreement.

Any Deductible in Excess of \$50,000 and/or Self-Insured Retentions must be disclosed to the City.

15.6 Acceptability of Insurers

Each policy shall be from a company with current A.M. Best's rating of A VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

15.7 Insurance of Subcontractors

Contractor shall be responsible for causing Subcontractors to maintain the same types and limits of coverage in compliance with this Agreement, including naming the City as an additional insured to the Subcontractor's policies.

15.8 Verification of Coverage

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Article. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences.

15.9 Loss or Reduction in Insurance

In the event that Contractor fails to retain or maintain insurance with the scope and amounts of coverage required hereunder, City shall have the right, but not the obligation, to either terminate this Agreement, or obtain insurance coverage as required herein on behalf of Contractor and utilize funds from the Surety defined in Section 14 to pay the cost of providing such coverage.

**SECTION 16.
ASSIGNMENT, SUBLETTING, AND TRANSFER;
REQUIREMENTS AND LIMITATIONS**

16.1 General

The franchise granted by this Agreement shall not be sold, hypothecated, sublet, assigned, or otherwise transferred, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold, or otherwise transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any person, except Contractor, either by action or inaction of Contractor or by operation of law (any of the foregoing, an "Assignment"), without the prior written consent of the City which may be withheld with or without cause. For purposes of permitting Contractor to subcontract to assist in providing discrete services hereunder, and provided Contractor will continue to provide substantially all Solid Waste Handling Services hereunder with its own employees, the written consent of the City Manager shall suffice. Any other Assignment shall require the written consent of the City Council as expressed by a Resolution. Any attempt by Contractor to hypothecate, subcontract, lease, assign, sell, or otherwise transfer any right or interest in this Agreement without the written consent of City shall be null and void and shall give rise to City's right, but not obligation, to terminate this Agreement.

16.2 Assignment to a Subsidiary.

Notwithstanding any provision hereof to the contrary, the City Council's consent shall not be required in the event of an Assignment to a subsidiary or co-subsubsidiary of Contractor's parent company, Waste Management, Inc. ("WMI"), provided (i) WMI has not, subsequent to the date of this Agreement, completed an Assignment, as such term is broadly defined in Section

16.3 below, (ii) such subsidiary or co-subsiary has demonstrated the financial and technical ability to perform the services and responsibilities required by this Agreement, and (iii) WMI, either directly or indirectly, owns a majority interest in, and controls such subsidiary or co-subsiary; rather, such an Assignment shall only require the City Manager's approval, which approval shall not be unreasonably withheld.

16.3 Assignment to be Broadly Interpreted

For purposes of this Section the term "Assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of Contractor's or WMI's assets dedicated to Solid Waste Handling Services under this Agreement to a third party; (ii) a sale, exchange or other transfer of any capital stock or other voting securities of Contractor or WMI to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor or of WMI, including, without limitation, (a) any actual sale, transfer, or acquisition of Contractor or WMI by any entity in which WMI, or WMI's principals as of the Effective Date, do not own a majority interest and control, (b) Contractor's grant of a management contract to any person or entity which is applicable to any aspect of Contractor's performance pursuant to this Agreement, or (c) transfer of the beneficial interest of the cumulative amount of ten percent (10%) or more of Contractor's voting securities to a person, entity, or group of persons acting in concert who, as of the effective date hereof, own less than ten percent (10%) of such voting securities, and in which WMI does not own a majority interest and control; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor or any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, transfer occurring in the event of a probate proceeding, foreclosure, retention of collateral in satisfaction of debt or other judicial or non-judicial remedy by a creditor; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) or any other circumstances which has the effect of any such transfer or change of ownership, or change of control of Contractor.

16.4 Nature of Agreement – Personal to Contractor

Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has selected Contractor to perform the services specified herein based on (1) Contractor's experience, skill and reputation for conducting its Solid Waste Handling Services in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste Handling Services management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Contractor to perform the Solid Waste Handling Services to be rendered by Contractor under this Agreement.

16.5 Procedure for Consideration of Assignment

If Contractor requests City's consideration of and consent to an Assignment, the City Council may deny, approve or conditionally approve such request in its sole and absolute discretion. Under no circumstances shall City be obliged to consider any proposed Assignment if Contractor is in default at any time during the period of consideration. Should the City consent to any Assignment request, such Assignment shall not take effect until all conditions relating to the City's approval have been met including, but not limited to, conditions requiring acceptance of amendments to this Agreement. Any request for an Assignment shall be made in a manner to be prescribed by the City Manager, and no request by Contractor for consent to an Assignment need be considered by City unless and until Contractor has met (or with respect to matters that would only occur upon completion of the Assignment if approved, made reasonable assurances that it will meet) the following requirements:

(A) Contractor shall undertake to pay City its reasonable direct and indirect expenses, including administrative, investigative, consulting, and attorneys' fees and costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such Assignment (collectively the "Administrative Assignment Fee"). An advance non-refundable payment in an amount to be determined by the City Manager towards the Administrative Assignment Fee shall be paid to the City prior to City's consideration of any Assignment request, although Contractor shall be responsible to pay all costs incurred by City in considering a request for Assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the Assignment. The Administrative Assignment Fee is in addition to and not in lieu of any franchise fees specified in this Agreement.

(B) If requested to do so, Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.

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

(D) The proposed assignee shall execute an agreement in a form reasonably acceptable to City assuming all of Contractor's rights and liabilities under this Agreement.

SECTION 17. REVIEW OF SERVICES AND PERFORMANCE

17.1 Performance Hearing

(A) Commencing in or about September 2018, and every two (2) years thereafter, City may hold a hearing to review Contractor's Solid Waste Handling Services, source reduction, processing and other diversion services and overall performance under this Agreement (the "Solid Waste Handling Services and Performance Review Hearing"). The purpose of the Solid Waste Handling Services and Performance Review Hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and disposal to achieve a continuing, advanced Solid Waste Handling Services, source reduction and Recycling and disposal system; and to ensure all Solid Waste Handling Services are being provided by Contractor with adequate quality, effectiveness and economy and in full compliance with the terms of this Agreement. Topics for discussion and review at the Solid Waste Handling Services and Performance Review Hearing shall include, but shall not be limited to, Solid Waste Handling Services provided, feasibility of providing new Solid Waste Handling Services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding all applicable diversion requirements, regulatory constraints and Contractor performance. City and Contractor may each select additional topics for discussion at any Solid Waste Handling Services and Performance Review Hearing.

(B) In addition to the Solid Waste Handling Services and Performance Review Hearings City may hold in accordance with the immediately preceding paragraph, if the number of Customer complaints regarding Contractor's Solid Waste Handling Services are deemed by City to be excessive, City may, at any time (subject to the paragraph immediately below), hold a Solid Waste Handling Services and Performance Review Hearing.

(C) City shall notify Contractor of its intent to hold a Solid Waste Handling Services and Performance Review Hearing at least ninety (90) days in advance thereof. The notice will indicate whether the hearing will occur before City staff, the City Council, or such other body as the City may designate in the notice. Forty-five (45) days after receiving notice from City of a Solid Waste Handling Services and Performance Review Hearing, Contractor shall submit a report to City which may contain such information as it wishes to have considered, and shall contain the following:

(1) Current diversion rates and a report on Contractor's outreach activities for the past year.

(2) Recommended changes and/or new programs and/or Solid Waste Handling Services to improve the City's ability to meet all applicable diversion requirements and to contain costs and minimize impacts on rates.

(3) Any specific plans for provision of changed or new programs and/or Solid Waste Handling Services by Contractor.

(D) The reports required by this Agreement regarding Customer complaints shall be used as one basis for review of Contractor's performance, and Contractor may submit other relevant performance information and reports for consideration at the Solid Waste Handling Services and Performance Review Hearing. In addition to the above, City may request Contractor to submit any other specific information relating to its performance for consideration at the Solid Waste Handling Services and Performance Review Hearing, and any Customer may submit comments or complaints during or before the Solid Waste Handling Services and Performance Review Hearing, either orally or in writing. Contractor shall be present at and participate in the Solid Waste Handling Services and Performance Review Hearing.

17.2 Performance Satisfaction Survey

If requested by the City, Contractor will create and conduct a survey at Contractor's expense in preparation for any Solid Waste Handling Services and Performance Review Hearing held pursuant to Section 17.1. City shall notify Contractor of its desire for such a survey at least ninety (90) days in advance of the Solid Waste Handling Services and Performance Review Hearing. The purpose of the survey is to determine Customer satisfaction with current Collection services, and Customer service provided by Contractor. The survey will be conducted by an independent third party market research organization, who shall contact a Customer sample deemed appropriate to obtain a margin of error not to exceed five percent (5%). Contractor shall obtain City's approval of the survey's content, format, and Customer contact list prior to its distribution. The City may require that Contractor have Customer responses to the survey returned directly to the City. The survey results shall be made available to the City thirty (30) days prior to the Solid Waste Handling Services and Performance Review Hearing. If approved in writing by the City Manager, the foregoing may be satisfied by Contractor providing Customer survey data it gathers in the regular course of its business.

SECTION 18. CITY'S REMEDIES; DEFAULT AND TERMINATION

18.1 Notice of Default

If the City Manager determines that Contractor has defaulted in the performance of any obligation hereunder, or that Contractor's performance pursuant to this Agreement with respect to such matters has not been in conformity with reasonable industry standards which are obtained in similar cities in Southern California, the provisions of this Agreement, the requirements of the Municipal Code, the requirements of CalRecycle, including, but not limited to, requirements for source reduction and Recycling or any other applicable federal, state, or local law or regulation, including but not limited to the laws governing transfer, storage, or disposal of Special Wastes, or Hazardous Substances (to the extent applicable to Contractor, and/or Contractor's activities

under this Agreement), the City Manager may provide written notice to Contractor of such default. The City Manager may, in such written notice, set a reasonable time within which correction of such default shall be made. Unless a longer or shorter time is otherwise specified by the City Manager, a reasonable time for correction shall be thirty (30) days from the date such written notice is given.

18.2 Failure to Cure

If Contractor fails to correct, to the satisfaction of the City Manager, all deficiencies contained in the written notice thereof within the specified time, or if it is not reasonably possible to correct such deficiencies within the specified time, and Contractor fails to commence to correct or remedy such deficiencies within the specified time and diligently effect such correction or remedy thereafter, then the City Manager may refer the matter to the City Council for review, or review the matter himself or herself.

18.3 Review by City Manager

If the City Manager reviews the matter and determines that Contractor has failed to properly or adequately correct any default set forth above, the City Manager, in the exercise of his or her discretion, may terminate this Agreement, or take such other action as he or she deems appropriate to pursue any remedy available to City. A decision or order of the City Manager shall be final and binding on Contractor unless Contractor files a "Notice of Appeal" with the City Clerk within fifteen (15) business days of the date the notice of the City Manager's decision is given to Contractor as provided in Section 31.8. The City Manager shall schedule any appeal for consideration by the City Council at the earliest feasible City Council Meeting following the date a Notice of Appeal is given to City.

18.4 City Council Review

In the event an appeal of a decision of the City Manager is filed, or if the City Manager refers the matter to the City Council without rendering a decision, the City Council shall set the matter for consideration before the City Council as a regular agenda item. In reviewing the matter the City Council may consider any information reported by the City Manager regarding the deficiencies, and shall give Contractor, or its representatives and any other interested person, a reasonable opportunity to be heard. The City Council shall determine whether Contractor has failed to properly or adequately perform as set forth above, and if so whether to terminate this Agreement, or to pursue any other remedy available to City.

18.5 Performance During Reviews

Contractor's performance under this Agreement is not excused during any period of time when its performance is under review as set forth above, including at any time prior to a final decision as to whether such performance is deficient.

18.6 Termination without Right to Cure

The above right of termination as a result of Contractor's failure to timely cure any deficiency is in addition to City's right to terminate this Agreement without affording Contractor an opportunity to cure under any of the following circumstances

(A) If Contractor practices, or attempts to practice, any fraud upon City.

(B) If Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

(C) If Contractor willfully violates any orders or rulings of any regulatory body having jurisdiction over Contractor, which violation will materially interfere with Contractor's performance of this Agreement directly related to Solid Waste Handling Services provided by Contractor pursuant to this Agreement. So long as City's rights are not prejudiced during the pendency of any challenge to such orders or rulings by Contractor, Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no material breach of this Agreement shall be deemed to have occurred until a final ruling has been rendered.

(D) If Contractor ceases to provide Solid Waste Handling Services, including Collection of Solid Waste and/or Recyclable Material as required under this Agreement over all or any portion of the Franchise Area for a period of seven (7) consecutive days or more, for any reason not specified as a force majeure event hereunder.

(E) If Contractor fails to materially comply with any insurance or indemnification requirement set forth in this Agreement; provided, however, that Contractor shall have a reasonable opportunity to cure any default relating to the Contractor's failure to provide the City with proof of insurance, so long as such insurance is in effect at all times.

(F) If City is required to pay any fine or penalty, which Contractor is required by the terms hereof to pay, yet which Contractor fails, refuses, neglects or is unable to timely pay.

(G) If Contractor, or any management level employee of Contractor is convicted of a "Criminal Matter" (as defined herein). For purposes of this Section the term "Criminal Matter" refers to any felony or misdemeanor offense having any relationship to either Solid Waste Handling Services or public corruption (including, without limitation, bribery, conflict of interest related allegations, vote selling, or any similar type charges).

18.7 Liquidated Damages

18.7.1 General

The City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of certain specific obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied Solid Waste Handling Services or denied quality or reliable Solid Waste Handling Services; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of this Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity

which are incapable of measurement in precise monetary terms; (iii) that the Solid Waste Handling Services that are the subject of this Agreement might be available at substantially lower costs than alternative Solid Waste Handling Services and the monetary loss resulting from denial of Solid Waste Handling Services or denial of quality or reliable Solid Waste Handling Services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such specific breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

18.7.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards

The Parties further acknowledge that consistent, reliable Solid Waste Handling Services are of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of Solid Waste Handling Services commitment in entering into this Agreement with Contractor. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable Solid Waste Handling Services and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such breaches as an event of default, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that this Agreement was made.

Contractor
Initial Here _____

City
Initial Here _____

18.7.3 Calculations for Liquidated Damages

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below for each type of action warranting such damages:

18.7.3.1 Collection Reliability

(A) For each failure to commence providing Solid Waste Handling Services to a new Customer account within seven (7) days after order, which exceed five (5) such failures annually: \$150.00.

(B) For each failure, which exceeds ten (10) such failures annually, to Collect Solid Waste from any established Customer on the scheduled Collection day and not Collected within the period described in this Agreement: \$150.00.

(C) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$150.00.

18.7.3.2 Collection Quality

(A) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright which exceeds ten (10) such occurrences annually: \$150.00.

(B) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: \$250.00.

(C) For each occurrence of damage to private property in an amount in excess of \$1,000 where compensation has not been paid, which exceeds five (5) such occurrences annually: \$250.00.

(D) For each failure to clean up Solid Waste spilled from properly filled (not overfilled) Containers, excepting amounts that are so nominal in nature that they would not reasonably be expected to be noticed by the driver of a Collection Vehicle, within 90 minutes that exceeds ten (10) such failures annually: \$150.00.

18.7.3.3 Customer Responsiveness

(A) For each failure to initially respond to a Customer complaint within one (1) business day, which exceeds five (5) such occurrences annually: \$250.00.

(B) For each failure to process Customer complaints to City as required herein, which exceeds five (5) such occurrences annually: \$250.00.

(C) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within one (1) business day of a request from City that exceeds ten (10) failures annually: \$150.00.

18.7.3.4 Timeliness of Submissions to City

(A) Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily liquidated damage amount shall be:

(1) Quarterly Reports: \$250.00 per day.

(2) Annual Reports: \$350.00 per day.

18.7.3.5 Cooperation During Transition With Subsequent Solid Waste

Enterprise

(A) For each day routing information, including Billing information and other operating records needed to provide Solid Waste Handling Service to a Premises, is

requested by City or any subsequent solid waste enterprise in accordance with Section 29 and is received after City-established due dates, both for preparation of a request for proposals and for any subsequent solid waste enterprise's implementation of service: \$1,000/day.

(B) For each day delivery of keys, security codes, remote controls used to access garages, gates and bin enclosures, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new solid waste enterprise providing Solid Waste Handling Servicing to Customers with access issues: \$1,000/day.

(C) For delay in not meeting the requirements from Section 29 in a timely manner, in addition to the daily liquidated damages for breach under Sections 18.7.3.5(A)-(B) above, a one-time charge of: \$35,000.

18.7.4 Process for Assessment of Liquidated Damages

(A) City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or through an investigation of Customer complaints. It is the desire of the Parties to work together to avoid the imposition of liquidated damages and accordingly City will endeavor to timely communicate to Contractor any information that it receives which might give rise the imposition of liquidated damages in order to facilitate Contractor's ability to correct any deficiency, or prevent the recurrence of any conduct for which liquidated damages might eventually be imposed.

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

(C) City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

18.7.5 Timing of Payment

Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against any security required by this Agreement to obtain payment, and/or find Contractor in default and exercise its right to terminate this Agreement as set forth herein.

SECTION 19.
CONTRACTOR'S REMEDIES; ADMINISTRATIVE HEARING

19.1 Administrative Hearing

Should Contractor contend that City is in breach of any aspect of this Agreement, it shall give notice to the City Manager requesting an administrative hearing on the allegation. The hearing shall occur as soon as reasonably possible, or on such date as mutually agreed by the Parties, and shall be held before an impartial hearing officer to be determined by the City Manager. The hearing officer shall make an advisory ruling on Contractor's allegations, and suggest a remedy if a breach by City is determined to exist. The hearing officer's ruling and recommendations shall become final and binding if the Parties so agree in writing within thirty (30) days of the date notice of the decision is given to both Parties. Otherwise, the hearing officer's ruling shall have no further force or effect.

19.2 Other Remedies; Claims

Contractor shall be entitled to all available remedies in law or equity for City's breach of this Agreement; provided, however, Contractor shall not file or otherwise commence any action against City, in law or equity, in any court, until after an administrative hearing as set forth above has been completed, and the above noted thirty (30) day period to accept the hearing officer's decision has passed, or either City or Contractor has given timely written notice to the other that it will not accept the hearing officer's decision.

19.3 Actions for Damages

As a prerequisite to the filing and maintenance of any action for damages by Contractor against City arising out of this Agreement, Contractor shall present a claim to City, as required by Government Code Section 910 et seq., within thirty (30) days of the date of the occurrence giving rise to the claim for damages.

SECTION 20.
CITY'S ADDITIONAL REMEDIES FOR BREACH BY CONTRACTOR

In addition to any other remedies set forth herein, City shall be entitled to any or all of the following rights and remedies in the event of a breach of this Agreement by Contractor:

(A) The right to use Contractor's equipment for the purpose of providing Solid Waste Handling Services, for a period not to exceed six (6) months. In the case of equipment not owned by Contractor, Contractor shall assign to City, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses such equipment, the right to use and possess the equipment. If City exercises its rights under this Section, City shall pay to Contractor the reasonable rental value of the equipment for the period of City's possession thereof (although payment may, if appropriate, occur in the form of a setoff against damages otherwise owed by Contractor pursuant to the terms hereof);

(B) The right to license others to perform the Solid Waste Handling Services otherwise to be performed by Contractor hereunder, or to perform such Solid Waste Handling Services itself; and

(C) The right to obtain damages and/or injunctive relief. Both Parties recognize and agree that in the event of a breach of this Agreement by Contractor, City will suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to specifically enforce the provisions of this Agreement, and to enjoin the breach hereof.

SECTION 21. RIGHTS OF CITY TO PERFORM DURING EMERGENCY

21.1 Provision of Service

Should Contractor, for any reason whatsoever, refuse or be unable to provide Solid Waste Handling Services for a period of more than seventy-two (72) hours, and if as a result thereof, Solid Waste should accumulate in City to such an extent or in such a manner that the City Manager finds that such accumulation endangers or menaces the public health, safety, or welfare, City shall have the right, upon twenty-four (24) hours prior written notice to Contractor, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of Contractor previously used in providing Solid Waste Handling Services and provide, through its own forces or otherwise, Solid Waste Handling Services which Contractor otherwise would be obligated to provide pursuant to this Agreement. Contractor agrees that in such event it shall fully cooperate with City to affect such a transfer of possession for City's use.

21.2 Possession of Equipment

Contractor agrees, that in the event of circumstances described in Section 21.1 above, City may take temporary possession of and use all of said equipment and facilities without paying Contractor any rental or other charges. Upon Contractor giving City notice that it is able to resume its normal responsibilities under this Agreement City shall relinquish possession of all of the above mentioned property to Contractor.

21.3 Exclusions from Right to Possession of Equipment without Compensation

Specifically excluded from the circumstances in which City may possess and utilize Contractor's equipment without compensation are circumstances in which Contractor fails or refuses to provide Solid Waste Handling Services hereunder for any reason which is not a force majeure event as defined herein. In such circumstances City's right to utilize and possess Contractor's equipment shall be subject to the provisions of the above Section 20.

SECTION 22. PRIVACY

Contractor shall strictly observe and protect the privacy rights of Customers. Information identifying individual Customers or the composition or contents of a Customer's Solid Waste stream, or any of the Billing information pertaining to any Customers, shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court

of law, by statute, ordinance, or regulation of a governmental agency having jurisdiction, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste audits which may be required by AB 939 or this Agreement. Contractor shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of Customers. The rights afforded Customers pursuant to this Section shall be in addition to any other privacy right afforded Customers pursuant to federal or state law.

SECTION 23. REPORTS AND ADVERSE INFORMATION

The Parties acknowledge that City will require reporting at various intervals by which information important to City can be compiled and analyzed. Throughout the Term the Parties agree to work together to address City's needs with respect to the information to be contained in reports prepared by Contractor. The following is intended as a starting point in order to have established an objective baseline for reporting, but the frequency and content of the reports called out below may be changed by agreement of the Parties; provided any such change is approved by the City Manager in writing. Quarterly reports shall be submitted within forty-five (45) calendar days after the end of the calendar quarter.

23.1 Quarterly Reports

At a minimum, Contractor shall report the following to City on a quarterly basis: (i) Solid Waste Collected by Contractor for each quarter, sorted by type of Solid Waste in tons broken down at a level acceptable to City which at a minimum shall include: refuse, Green Waste, items commonly known in the waste industry as "e-waste" and/or "universal waste"; item counts, types of Recyclable Materials including PET, HDPE, mixed plastics, aluminum, cardboard, mixed paper, sand, and concrete), as well as by Customer type (i.e., Single Family Dwelling Customer, Multi-Family Dwelling Customer, Village Commercial Customer, roll-off, curbside, etc.); (ii) the facilities where all Solid Waste Collected was processed or disposed; (iii) warning notices issued for contaminated Recyclable Materials, and Green Waste Containers; (iv) a narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate, summarized by nature of complaints; (v) copies of promotional and public education materials sent during the quarter; (vi) description of Contractor outreach activities conducted the previous quarter; and (vii) such other information or reports that the City may reasonably request or require. Contractor shall, upon demand by City, provide true and accurate copies of landfill tipping receipts, records showing delivery at processing or reuse facilities, and similar such documents in order to enable City to verify Contractor's quarterly reports.

23.2 Annual Reports

Within forty-five (45) days after the end of each calendar year during the Term of this Agreement and within forty-five (45) days after the end of the Term, Contractor shall submit a written annual report, at its sole expense, in a form approved by City, which includes, but is not limited to, the following information:

(A) A summary of the previous year's activities including, but not limited to, Solid Waste Handling Services begun or discontinued during the reporting year, and the number of Customers broken down on a monthly basis;

(B) A summary of the total tons of Solid Waste Collected in City in the preceding year as well as a summary of the total tonnage diverted from the State's landfill systems during that time frame;

(C) Information and reports required by City to meet its reporting obligations imposed by AB 939 and the regulations implementing AB 939, in a form and content approved by the City Manager;

(D) A revenue statement, certified by the chief financial officer of Contractor, setting forth Franchise Fees paid and the basis for the calculation thereof, including specifically a breakdown of sources of revenue included in Gross Receipts and the amount of revenue derived from each such source comprising Gross Receipts;

(E) A list of Contractor's officers and the members of its Board of Directors, or as applicable a list identifying all Persons holding a membership interest in Contractor; and

(F) A list of stockholders or other equity investors holding five percent (5%) or more of the interest in Contractor.

23.3 Format of Reports

Each quarterly and annual report shall be submitted to City, addressed to the City Manager or his or her designee. Records related to performance of this Agreement shall be maintained by Contractor in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. The format of each report shall be approved by City. Contractor agrees to submit all reports to e-mail addresses designated by City in an electronic format approved by the City, compatible with City's software/computers at no additional charge.

23.4 Adverse Information

(A) Contractor shall provide City copies of all reports, pleadings, applications, notifications, communications, and documents, as well as copies of all decisions, correspondence, and actions, and other material adversely affecting this Agreement, or related in any manner to Contractor's performance of this Agreement, submitted or received by Contractor to or from the United States Environmental Protection Agency, CalRecycle, the California Regional Water Quality Control Board, and any other federal, state, regional, or local regulatory agency. Copies shall be submitted to City simultaneously with Contractor's filing of such matters with said agencies. Contractor's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request.

(B) Contractor shall submit to City such other information or reports in such forms and at such times as City may reasonably request or require.

(C) All reports and records required under this or any other Section hereof shall be furnished at the sole expense of Contractor.

23.5 Disaster and Labor Unrest Plan

Within ninety (90) days after the Effective Date, Contractor shall prepare an updated draft disaster cleanup and labor unrest implementation plan that sets forth procedures for Collection of Solid Waste, and implementation of other Solid Waste Handling Services set forth herein, following a major disaster such as an earthquake, fire or other similar event, or a strike or labor unrest. The plan shall address, as applicable, priorities for cleanup at critical facilities, procedures for reimbursement for costs, describe communication plans, list key contact persons, and provide maps showing proposed sites for stockpiling of disaster debris that cannot be transported to the landfill. Contractor shall coordinate the plan with City's emergency service teams. The draft plan shall be presented to the City Manager for consideration and approval. The final plan shall be distributed to those employees of Contractor and City who would have a role in implementing it in the event of a disaster or labor unrest.

23.6 Failure to Report

The refusal of Contractor to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by Contractor in such report shall be deemed a material breach of this Agreement, and shall subject Contractor to all remedies, legal or equitable, which are available to City under this Agreement or otherwise.

SECTION 24. COMPENSATION

24.1 Contractor's Rates

Contractor shall provide Solid Waste Handling Services to Customers pursuant to this Agreement at rates it sets, charges to, and collects from Customers, which rates shall not exceed the maximum rates set forth in Exhibit A, which sets out the maximum rates that may be charged by Contractor, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. The maximum rates set forth in Exhibit A are inclusive of all Solid Waste Handling Services to be provided, including transportation, disposal, and Container costs, and no other charges shall be imposed by Contractor for such Solid Waste Handling Services.

24.2 Guarantee of Lowest Available Single Family Dwelling Rates in County

Contractor guarantees that its monthly rates for Standard Service, Low Volume Service, and services at the Senior Citizen Discount, more fully described in Section 8 hereof, which are provided at Single Family Dwellings, individually and separately, shall be the lowest rate available in any city in Orange County, California for "similar services." Accordingly, in the event that similar services at Single Family Dwellings is made available to residents in any other city in Orange County, California (with the exception of the City of Laguna Woods, which shall not be considered), at a rate lower than those actually charged by Contractor within City at any time during the Term of this Agreement, Contractor shall reduce the rate it charges to Customers at Single Family Dwellings in City for the applicable service (Standard Service, Low Volume Service, or service at the Senior Citizen Discount) to a level lower than the rate available in such

other city. The annual performance review set forth in Section 28.3 shall include an evaluation of the monthly rates available to residents in all Orange County cities for each of the service types Contractor provides at Single Family Dwellings (Standard, Low Volume and Senior Citizen Discount.) Contractor shall reduce its rates pursuant to this Section within 30 days of City giving it notice that, based on information learned in a performance review or otherwise, a rate equal to or lower than that Contractor charges in City for a particular type of service at Single Family Dwellings has become available in any other Orange County city.

“Similar services” as used in this Section refers to Solid Waste Handling Services at Premises upon which Dwelling Units exist utilizing an automated Collection process involving Carts. When making comparisons of similar service with other cities, all automated Collection using Carts shall be considered as being in one of three categories: (i) sixty-four (64) to ninety-six (96) gallon Carts (Standard Service); (ii) thirty-five gallon Carts (Low Volume Service); or thirty five (35) to ninety-six (96) gallon Carts for Customers receiving a senior discount (Senior Citizen Discount) [recognizing with all of the foregoing that there are minor variations in Cart sizes used by cities in Orange County]. When making a comparison to determine whether a rate in another city is for a “similar service,” only the total price paid by residents in the other city for Collection of Solid Waste in a Cart of approximately the same size utilized in City shall be considered, inclusive of all fees, and no consideration shall be given to differences in Recycling or Solid Waste Collection programs, the number of Carts provided, geographic conditions, franchise or other fees, contract terms, or any other factors. In cases where minor discrepancies exist between the size of the Carts utilized in City and the Carts utilized in other cities to which a comparison for similar services purposes is being made, the City Manager shall determine whether the Carts utilized in the other cities are most like a thirty-five (35) gallon, or a sixty-four (64) to ninety-six (96) gallon Cart (as the case may be for each type of Collection service at Premises at which Dwelling Units exist), and his decision shall be final and binding on the Parties. Any dispute regarding the application of this Section, including the determination of whether services in another city constitute “similar services,” shall be decided by the City Manager in his reasonable judgment and at his sole discretion.

24.3 Guarantee that Bin Service Rate Will Remain in Lowest Third of All Such Rates Available in the County

As part of the consideration for this Agreement, Contractor warrants and guarantees that its rates for weekly Solid Waste Collection utilizing Bins (as opposed to Temporary Bin service) will be in the lowest third of all such rates available in all OC Franchise Cities With Commercial Bin Service for “similar services.” Accordingly, in the event weekly Solid Waste Handling Services utilizing Bins are available in one third of the other OC Franchise Cities With Commercial Bin Service, at rates lower than those charged by Contractor for similar services in City at any time during the Term hereof, Contractor shall reduce its rates such that they are in the lowest third of all such rates available in all OC Franchise Cities With Commercial Bin Service. For purposes of determining rates for “similar services” pursuant to this paragraph, consideration shall be given to the type and capacity of the Bin utilized and the frequency of Collection. The annual performance review audit set forth in Section 28.3 hereof shall include an evaluation of the rates available in all OC Franchise Cities With Commercial Bin Service that provide weekly Bin services. Contractor shall reduce its rates as set forth above within 30 days of City giving it notice that, based on information learned in a performance review or otherwise, rates for similar services have become available which collectively make the rates otherwise charged by

Contractor for Bin services within City higher than the lowest one third of such rates available for all other OC Franchise Cities With Commercial Bin Service.

As used in this Section, and when referring to Solid Waste Collection utilizing Bins, the term “similar services” shall mean the rate as it may vary according to weekly Collection frequency and, irrespective of what, if any, Recycling programs may be offered in connection with the Collection service. Hence, by way of example, Contractor’s Bin rate shall be in the lowest third of all such rates available in OC Franchise Cities With Commercial Bin Service for services received once per week, twice per week, three times per week, and so on, in a given size Bin. In the event an OC Franchise City With Commercial Bin Service does not offer a Bin size identified in Exhibit A, no comparison of rates shall be performed for that Bin size in connection with such OC Franchise City With Commercial Bin Service. A comparison of rates shall only be performed for Bin sizes that are offered in at least fifty percent (50%) of OC Franchise Cities With Commercial Bin Service. Bins used for Collection of Recyclable Material, Green Waste, or, except as provided in Section 24.4 below, Organics, shall not be included in comparisons of similar service, and rather the comparison is only intended to occur in connection with Bins used for the Collection of mixed Solid Waste.

24.4 Organics Rates

The maximum rates for Organics set forth in Exhibit A shall not be subject to Section 24.3 for the initial three (3) years of the Term of this Agreement. On or about the third anniversary of the Effective Date, the Parties shall perform an evaluation of the Organics collection and recycling programs in all OC Franchise Cities With Commercial Bin Service for purposes of determining if a standard methodology for establishing maximum rates for Organics has been established that is different from the methodology utilized by Contractor in establishing the maximum rates set forth in Exhibit A as of the Effective of this Agreement (“Contractor’s Initial Organics Methodology”), and if so, whether such standard methodology is appropriate for the City. If the Parties mutually determine that a standard methodology that is different from Contractor’s Initial Organics Methodology exists and is appropriate for the City, the Parties shall revise the maximum rates set forth for Organics in Exhibit A accordingly, and replace and update Exhibit A. Commencing as of the date the Parties (i) replace and update Exhibit A, or (ii) determine that Contractor’s Initial Organics Methodology is appropriate and shall continue to be the methodology utilized for determining the maximum rates for Organics in the City, Contractor’s Organics rate shall become subject to Section 24.3 above; provided, however, that the comparison required by Section 24.3 shall only include those OC Franchise Cities With Commercial Bin Service that utilize a similar methodology for establishing maximum Organics rates as utilized by Contractor. The Parties further acknowledge that because Organics Recycling is in its infancy, industry standards will continue to evolve as the Organics industry continues to develop, and that future changes to the methodology for determining the maximum Organics rates in the City may also be necessary. The City Manager shall have authority to act on behalf of the City pursuant to this Section 24.4, including, without limitation, to agree to changes in the maximum rates set forth in Exhibit A for Organics.

24.5 Resolution of Disputes Regarding Rate Adjustments

Any dispute regarding an adjustment to the maximum rates Contractor may charge, or the computation thereof, shall reasonably be decided by the City Manager. The rates in effect at the

time such dispute is submitted to the City Manager shall remain in effect pending resolution of such dispute. The effective date of the adjusted maximum rate following the resolution of any such dispute, whether retroactive or prospective, shall be determined by the City Manager.

24.6 Annual Consumer Price Index Adjustments

Commencing on September 1, 2017, the maximum rates as set forth in Exhibit A shall be adjusted, and such rates shall be adjusted annually thereafter on each subsequent September 1st during the Term hereof (the "Adjustment Dates"), as follows.

24.6.1 Service Component.

The Service Component comprises eighty percent (80%) of the maximum rates set forth in Exhibit A. The Service Component will be adjusted by the percentage increase (if any) in the Consumer Price Index, for All Urban Consumers, CUURA421SA0 not seasonally adjusted, all items index (CPI-U) – Los Angeles County, Riverside County, Orange County, as published by the United States Department of Labor, Bureau of Labor Statistics, by calculating the average of the changes in the CPI-U between each month during the April to March period immediately preceding the date of the rate adjustment and the same month in the preceding year.

24.6.2 Disposal/Processing Component.

The Disposal Component comprises twenty percent (20%) of the rate. The Disposal Component will be adjusted by the percentage increase in the tipping fees or other charges imposed by the County of Orange pursuant to the County Agreement. Where the County of Orange has announced a rate adjustment to take effect at a time in the future other than September 1, that adjustment shall be considered when calculating the Disposal Component adjustment on a pro rate basis. Notwithstanding anything to the contrary in this Agreement, the Disposal Component shall be utilized only for purposes of calculating rate increases, and shall not be utilized in calculating Gross Receipts and/or in the Franchise Fee to be paid to City. The Franchise Fee shall be determined pursuant to the provisions of Section 11.3 of this Agreement, utilizing the definition of Gross Receipts set forth in Section 2.37 of this Agreement.

24.6.3 City Manager Approval of Rate Increases.

At least forty-five (45) days prior to charging Customers any rate increased in accordance with the above, Contractor shall obtain the City Manager's approval to do so. The City Manager shall approve such a request unless it is determined, based upon substantial evidence, that the requested adjustment to the maximum rate does not meet the requirements as set forth herein.

24.7 Methodology for Adjusting Maximum Rates Taking Into Account Lowest Rate Guarantees

The maximum rate Contractor may charge Customers, after annual adjustments to the Service Component of such rates occurs pursuant to Section 24.6 above, shall be determined as follows: (1) the maximum rates Contractor may charge Customers, as set forth in Exhibit A, shall be adjusted each year during the Term hereof as of the annual Adjustment Dates in accordance with the formula set forth in Section 24.6 above, without regard to the provisions of Section 24.2 and 24.3; and (2) the maximum rates Contractor may charge to Customers for the

period commencing on each annual Adjustment Date and ending on the next annual Adjustment Date shall be the lesser of (i) the maximum rates as adjusted pursuant to Section 24.6 and (ii) any lower rates identified by the City, and which Contractor may not exceed, pursuant to Sections 24.2 and 24.3; provided, however, such maximum rates may be required to be reduced (but may not be increased) during the period between Adjustment Dates pursuant to the provisions of Sections 24.2 and 24.3.

24.8 Limitations to Annual Adjustments to Service Component

Notwithstanding anything to the contrary in Section 24.6 above, the maximum rate may not be increased in any given year by more than five percent (5%), nor decreased (e.g., reduced more than zero percent (0%)); excepting increases associated with “discretionary adjustments” approved by the City Council pursuant to Section 24.11. In the event the formula set forth in Section 24.6 would have allowed for a greater than 5% increase or a decrease in any given year, but such increase or decrease does not occur as a result of this Section, the unused percentage increase or decrease otherwise permitted by Section 24.6 may be carried over until such time as it may be applied without violating the provisions of this Section (Hence, by way of example only, if the formula in Section 24.6 would provide for an increase of 7% in one year, the maximum rate may only be increased by 5% for the corresponding year due to Section 24.6. If, in the next year, the formula in Section 24.6 would provide for an increase of 3%, the unapplied 2% increase from the prior year may be applied to the formula in Section 24.6 for such next year, such that the total increase in the maximum rates for the two year period in question would be 10%. Alternatively, if the formula in Section 24.6 would provide for a decrease of 3% in one year, the maximum rate will not be decreased for the corresponding year. If, in the next year, the formula in Section 24.6 would provide for an increase of 5%, the unapplied 3% decrease from the prior year may be applied to the formula in Section 24.6 for such next year such that the increase in the maximum rates for the next year is 2%).

24.9 Contractor Responsibility to Calculate Rate Adjustments

It is anticipated that to obtain City Manager’s approval of Contractor’s requested rate increase, Contractor shall provide all necessary information to justify the request. City will make an effort to verify information provided by Contractor, but ultimately Contractor bears the burden of ensuring the submitted information is correct and supported by all necessary documentation. Contractor agrees and acknowledges that City is entitled to rely, in good faith, on information submitted by Contractor, including mathematical calculations, CPI data, and other documentation, to justify Contractor’s requested rate increase. In the event that there are errors in Contractor’s requested rate increase request, including, but not limited to, an inaccurate rate adjustment request, inaccurate application of the rate increase formula described above, or usage of inaccurate data, Contractor acknowledges and agrees that City is entitled to seek recovery of damages on behalf of the public, or impose future rate reductions, sufficient to compensate for the errors. Contractor also waives any arguments or defenses Contractor now has or may have in the future, including estoppel, waiver, or other similar equitable remedies, with respect to any action, claim, demand, proceeding or suit in law or equity of any and every kind and description brought by or on behalf of City or Customers due to errors in Contractor’s requested rate increase.

24.10 Compliance with Agreement

No increase to the maximum rates shall occur if the City Manager determines that Contractor did not substantially comply with all terms of this Agreement in the rate year preceding the increase, including without limitation, provisions hereof relating to reporting, diversion, and Customer service standards.

24.11 Discretionary Adjustments

Contractor may request an adjustment to the maximum rates set forth in Exhibit A at reasonable times other than as set forth above for unusual changes in the cost of providing Solid Waste Handling Services under this Agreement. For each request for an adjustment to the maximum rates brought pursuant to this Section Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for the assumptions made by Contractor in preparing the estimate. The City Council shall review Contractor's request and, in the City Council's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment.

24.12 Grants

From time to time, federal, state or local agencies including the City may provide to Contractor grants to assist in financing qualified programs provided by Contractor in the City (including, without limitation, grants for diversion programs and related equipment, alternative fuel vehicles and equipment, and Household Hazardous Waste Collection and Disposal). Contractor shall notify City upon receipt of any such grant funds that may be used to fund Solid Waste Handling Services provided pursuant to the terms of this Agreement. With the exception of grants already received by Contractor as of the Effective Date, and grants for Collection Vehicles, any funds received through grants for Solid Waste Handling Services in the City are intended to benefit City and its residents and businesses, and in essence are held by Contractor in trust on behalf of City. Accordingly, Contractor agrees that the total amount of compensation it receives from Customers hereunder, may be reduced by the amount of any such grant, unless the grant is used to pay for services in City. The City Council shall determine whether the reduction in Contractor's compensation shall be: (1) passed through to Customers designated by City as a reduction to maximum rates; (2) as an offset to the next increase to maximum rates requested by Contractor; (3) paid to City for use as City directs; or (4) applied in any combination of (1) through (3).

SECTION 25. IDENTIFICATION OF CONTRACTOR

Contractor has agreed to use the name "Waste Management of Orange County" to identify itself to the public as the specific organization that shall provide all Solid Waste Handling Services under this Agreement. Unless otherwise approved in writing by City, this name shall be used for all correspondence, Billing statements, directory listings, publications, brochures, references, signs, and vehicle and Container identification.

SECTION 26.
CITY'S FLOW CONTROL OPTION/COUNTY AGREEMENT

26.1 Flow Control Option

City shall have the absolute ability to choose the location for the delivery and/or disposal of all Solid Waste (including residue refuse from Recyclable Material, Green Waste, and Construction and Demolition (C&D) Debris Collected pursuant to this Agreement (hereinafter City's "Flow Control Option"). Contractor expressly consents to City's ability to direct the location for disposal of Solid Waste hereunder, and waives any and all rights to challenge City's ability to do so, including without limitation any rights under the Commerce Clause of the United States Constitution. As of the Effective Date, City shall be deemed to have exercised its Flow Control Option so as to require delivery of all Solid Waste Collected hereunder to the Orange County landfill system in a manner consistent with its obligations under the County Agreement (including, without limitation, its obligations related to Solid Waste that is delivered to a processing/transfer facility prior to being delivered to a landfill for disposal), and Contractor has agreed to handle all Solid Waste Collected hereunder in a manner consistent with City's exercise of its Flow Control Option as noted above. At any time during the Term of this Agreement the City Manager may notify Contractor in writing that City no longer desires to exercise its Flow Control Option. In the event City so notifies Contractor of its desire to cease exercising its Flow Control Option, Contractor shall have the absolute discretion to utilize any disposal facility, transfer station, Recycling facility, material recovery facility, landfill, or other facility of its choosing to retain, Recycle, process, and dispose of Solid Waste generated within the City, provided the use of such facility by Contractor enables it to meet all other requirements of this Agreement.

26.2 County Agreement

Contractor expressly acknowledges its awareness and understanding of the County Agreement which has been adopted and entered into by City. Moreover, Contractor acknowledges that it has had an opportunity to review the County Agreement, and is aware of the provisions thereof that require all Solid Waste Collected in the City Limits to be disposed of in the Orange County landfill system. Contractor further acknowledges that the County of Orange is an intended third party beneficiary of Contractor's obligations relating in any way to the disposal of Solid Waste pursuant to this Agreement and the County Agreement. Contractor hereby adopts as its obligations hereunder such provisions of the County Agreement that require action or inaction by it as City's Solid Waste franchisee. Contractor represents and warrants that it can and will perform its duties in connection with this Agreement in such a manner as to ensure that City does not breach the terms of the County Agreement as a result of Contractor's actions or inaction. In the event City advises Contractor in writing that the County Agreement has been terminated, or that it no longer wishes to exercise its Flow Control Option in a manner consistent with the County Agreement, then Contractor's obligations pursuant to this paragraph shall be terminated.

**SECTION 27.
INDEMNIFICATION**

27.1 General

(A) Contractor hereby agrees to and shall indemnify and hold harmless the City Indemnitees from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising out of, resulting from, and/or in any way connected with this Agreement including: (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, and/or subcontractors to comply in all respects with the provisions of this Agreement (including without limitation Contractor's obligation to ensure City complies with the requirements of the County Agreement), all Applicable Laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws); and (4) any challenge to the award of, or any provisions of this Agreement (including any claim that the application of any provision hereof violates any provision of the California Constitution). The foregoing indemnity and hold harmless provisions shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of City Indemnitees' negligence, but shall not extend to matters resulting from the City Indemnitees' sole negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys acceptable to City) the City Indemnitees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse City for any and all costs and expenses City incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Contractor. Contractor shall receive credit towards this indemnity obligation for any sums received by or for the benefit of City from insurance obtained by Contractor for the benefit of City

(B) Contractor, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend the City Indemnitees in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or any other federal or state laws to provide Collection services in the City.

(C) The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation, and shall survive the expiration or earlier termination of this Agreement.

27.2 Hazardous Substances Indemnification

(A) Without regard to any insurance coverage or requirements (but giving credit to Contractor for any sums received by or for the benefit of City from insurance obtained by Contractor for the benefit of City), and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to City) reimburse, indemnify, and hold the City Indemnitees harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:

(1) results in any demand, claim, notice, order, or lawsuit, asserting that any of the Indemnitees is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant; or

(2) relates to material Collected, transported, Recycled, processed, treated or disposed of by Contractor.

(B) Contractor's obligations pursuant to this Section shall apply, without limitation, to:

(1) any Claims brought pursuant to or based on the provisions of the Environmental Laws, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., the Carpenter-Presley-Tanner Hazardous Substances Account Act (California Health & Safety Code Sections 25300 et seq.), the California Hazardous Waste Control Laws (California Health and Safety Code Sections 25100 et seq.), the California Porter-Cologne Act (California Water Code Section 13000 et seq.), and any and all amendments and regulations thereto, and any other federal, state, regional or local environmental statutory or regulatory provision;

(2) any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation by Contractor of any facility;

(3) any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, disposal, processing or use of any materials recovered by Contractor; and

(4) any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

(C) The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor, but shall not extend to matters resulting from the Indemnitees' sole negligence, or willful misconduct.

(D) The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation, and shall survive the expiration or earlier termination of this Agreement.

(E) With regard to any claim covered by this provision arising from the delivery of Solid Waste to the Orange County landfill system pursuant to the terms of the County Agreement, the indemnity provisions hereof are intended to be supplemental to any indemnification obligations owed to the City by the County of Orange pursuant to the County Agreement.

SECTION 28. CONTRACTOR'S BOOKS AND RECORDS; AUDITS

28.1 Maintenance and Inspection of Records

Contractor shall maintain all records relating to the Solid Waste Handling Services provided hereunder, including but not limited to Customer lists, Billing records, accounts payable records, maps, AB 939 compliance records, records reflecting the number of refuse, Recycling and Green Waste routes and route hours by service category (such as Single Family Dwelling Customers, Multi-Family Dwelling Customers, Village Commercial Customers, rolloff, and special services), records demonstrating facilities, equipment and personnel used to perform Solid Waste Handling Services, records reflecting the number of refuse, Recycling and Green Waste Containers in service by frequency of Collection for each customer group (such as Single Family Dwelling Customers, Multi-Family Dwelling Customers, Village Commercial Customers, rolloff); records reflecting the number of Rolloff Box pulls, and such other documents and materials which reasonably relate to Contractor's compliance with the provisions of this Agreement (the "Records"), for the full Term of this Agreement, and an additional period thereafter of not less than three (3) years, or any longer period required by law. City shall have the right, upon five (5) business days advance notice, to inspect the Records. Such Records shall be made available to City at Contractor's regular place of business, but in no event outside the County of Orange.

28.2 CERCLA Defense Records

City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) for not

less than five (5) years following the termination of this Agreement, and agrees to notify City's Risk Manager, City Clerk and City Attorney before destroying such records thereafter. At any time, including after the expiration of the Term hereof, Contractor shall provide copies of such records to City. The requirements of this Section shall survive the expiration of the Term of this Agreement.

28.3 Annual Compliance Review

City intends to review Contractor's performance annually at its expense to ensure compliance with the terms and provisions of this Agreement ("Annual Compliance Review"). At a minimum, City intends to have internal staff or outside consultants review Contractor's performance to ensure ongoing compliance with the terms hereof, including, but not limited to, the payment of required fees, performance of the Solid Waste Handling Services stated herein, implementation of programs required under the Agreement, Contractor's maintenance and upkeep of records, Contractor's compliance with its obligations to charge rates that meet its obligations set forth in Section 24, and compliance with all Applicable Laws. Contractor shall provide any and all information reasonably requested by City in connection with its efforts to ensure compliance with the terms hereof, regardless of whether such information is specifically otherwise called out herein as an item that Contractor is required to maintain and provide to City.

28.4 Audits

28.4.1 Periodic Examination of Services

From time to time, City may request Contractor to make any or all of its records reasonably required (as determined by the City Manager) to verify Contractor's performance hereunder available to an independent auditor or examiner, to be selected by the City, for auditing and examination purposes (a "Discretionary Audit"). City shall bear the cost of any Discretionary Audit, except as otherwise provided herein. Should any Discretionary Audit reveal an underpayment of any Franchise Fee required pursuant to this Agreement, the amount of such underpayment shall become due and payable to City not later than fifteen (15) days after written notice of such underpayment is sent to Contractor by City, complete with any additional late charges as set forth herein. If a Discretionary Audit reveals inaccuracies or inconsistencies in more than five percent (5%) of all Customer accounts, either with Contractor's operations or Billing systems, or an underpayment of Franchise Fees of more than three percent (3%), Contractor shall bear the entire cost of such Discretionary Audit and shall pay a sum necessary to cover such costs to the City within thirty (30) days of demand.

28.4.2 Route Audit

Contractor shall complete an audit at its expense of its Collection routes for all Customers at Residential Premises and Village Commercial Premises at such times as may be requested by City; provided, however, that while City may request that such an audit occur at any time, it may not request such audits at Contractor's expense more than seven (7) times during the Term. The timing of such audits is at the City's discretion and may be required to be timed with the issuance of a request for proposals for a new agreement. The route audit, at minimum, shall consist of an independent physical observation by Person(s) other than the route driver or route supervisor of each Customer in the City. The route audit shall include, as a minimum, the following

information for each account: route number; truck number; account name; account number; account service address; service level per Billing cycle (quantity, size, frequency); observed containers (quantity, type and size); bin condition; signage; and graffiti.

Within thirty (30) days after the completion of the route audit, Contractor shall submit to City a report summarizing the results thereof which shall include: identification of the routes; truck numbers; number of accounts, by route and in total; number of Containers (broken down by type) per service address, per route and total number of Containers; types of exceptions observed; number of exceptions by type; total monthly Billing, pre-audit; total monthly Billing, post-audit (subsequent to corrections of identified exceptions); percentage of the number of accounts with errors to the total number of accounts served; and percentage of the "net" change in monthly Billing as a result of the audit to the total pre-audit monthly Billing.

The report shall include a description of the procedures followed to complete the audit, and shall include the names and titles of those supervising the route audits and the name and titles of those performing the observations. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used. The report shall also include a description of the changes and Contractor's plans to resolve any exceptions. The route audit data and results of the audit shall be available for review by the City or its representative.

SECTION 29. TRANSITION OBLIGATIONS

At the end of the Term, or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent solid waste enterprise it designates to assure a smooth transition of Solid Waste Handling Services. Contractor's cooperation shall include, but not be limited to, providing route lists, Billing information and other operating records needed to service all Premises covered by this Agreement. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall provide or use reasonable efforts to arrange to provide any new solid waste enterprise with all keys, security codes and remote controls used to access garages, gates and bin enclosures. Contractor shall be responsible for coordinating transfer immediately after its final Collection activities, so as to not disrupt Solid Waste Handling Services, including coordinating with the new solid waste enterprise on the removal of Contractor's Containers and the delivery of the new solid waste enterprise's Containers. Contractor shall provide City with detailed route sheets containing service names and addresses, billing names and addresses, monthly rate and service levels (number and size of containers and pickup days) at least ninety (90) days prior to the transition date, provide an updated list two weeks before the transition, and a final updated list with any changes the day before the transition. Contractor shall provide means of access to the new solid waste enterprise at least one full business day prior to its first day of Collection, and within sufficient time so as to not impede in any way the new solid waste enterprise from easily servicing all Containers.

**SECTION 30.
RULES AND REGULATIONS OF CITY MANAGER.**

The City Manager shall have the power to establish rules and regulations respecting the accumulation, Collection and transportation of Solid Waste not inconsistent with the provisions of this Agreement, providing such rules and regulations are found to be reasonably necessary by the City Manager for enforcement of the provisions of this Agreement, or any and all applicable laws and ordinances, and for the preservation of the public peace, health and safety. Contractor agrees to comply with any and all such rules and regulations. In the event the enforcement by City of any such rules or regulations results in increased costs to Contractor for the performance of the work and services under this Agreement, Contractor may seek a discretionary increase in the maximum rates set forth in Exhibit "A", pursuant to Section 24.10 hereof.

**SECTION 31.
GENERAL PROVISIONS**

31.1 Force Majeure

Contractor shall not be in default under this Agreement in the event that its ability to provide Solid Waste Handling Services, in compliance with its obligation to do so hereunder, is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, strikes or other labor disturbances lasting five (5) days or less (unless Contractor is in compliance with the disaster/labor unrest plan, in which case the time limitation shall not be applicable), embargoes or delays in transportation, explosion, natural disasters or threats of natural disaster such as floods, earthquakes, landslides, fires, pandemics, quarantines, or "other catastrophic events" which are beyond the reasonable control of Contractor. The term "other catastrophic events" does not include: (i) the financial inability of Contractor to perform; (ii) failure of Contractor to obtain any necessary permits or licenses from other governmental agencies; (iii) the failure to obtain the right, or the loss of the right, to use the facilities of any public utility where such failure is due in substantial part to the acts or omissions of Contractor; or (iv) strikes or other labor disturbances lasting longer than five (5) days.

31.2 Independent Contractor

Contractor is an independent contractor and not an officer, agent, servant, or employee of City. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, and subcontractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor. Neither Contractor nor its officers, employees, agents, or subcontractors shall obtain any rights to retirement or other benefits which accrue to City employees.

31.3 Pavement Damage

Contractor shall be responsible for the cost of repair of any extraordinary damage to the public streets located within the City resulting from providing the Solid Waste Handling Services required hereunder.

31.4 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees, agents, or subcontractors of Contractor, to private or public property, shall be promptly repaired or replaced at Contractor's expense.

31.5 Right of Entry

Contractor shall not have the right, until Contractor receives permission from the property owner, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Solid Waste Handling Services pursuant to this Agreement.

31.6 Law to Govern; Venue

The laws of the State of California shall govern this Agreement. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Orange.

31.7 Amendment

This Agreement is intended to carry out City's obligations to comply with the provisions of AB 939, AB 341, and AB 1826, as implemented by regulations of CalRecycle, as they from time to time may be amended. In the event that, after the Effective Date of this Agreement, AB 939, AB 341, or AB 1826 is amended, or other state or federal laws or regulations are enacted and prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Except as otherwise expressly stated herein, no other amendment of this Agreement shall be valid unless it is in writing and duly executed by the Parties.

31.8 Notices

All notices required or permitted to be given under this franchise shall be in writing and shall be personally delivered or sent by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City: City of Irvine
Attn: City Manager
One Civic Center Plaza
Irvine, CA 92623

With a copy to: Rutan & Tucker, LLP
Attn: A. Patrick Munoz
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626

To Contractor: Waste Management – Southern California Market Area
Attn: President
9081 Tujunga Avenue
Sun Valley, CA 91352

With a copy to: Waste Management – Southern California Market Area
Attn: Legal Counsel
9081 Tujunga Avenue
Sun Valley, CA 91352

or to such other address as either Party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed given on the date served if served personally between the hours of 8:00 a.m. to 5:00 p.m. on any regular business day for City's business offices. If mailed, notice shall be deemed given three (3) business days from the date such notice is deposited in the United States mail in the manner proscribed above.

31.9 Guarantee of Contractor's Performance

Pursuant to a guarantee in substantially the form attached as Exhibit C, Waste Management Holdings, Inc., a Delaware corporation ("Guarantor") has agreed to guarantee Contractor's performance of its obligations pursuant to this Agreement, and Contractor shall insure that Guarantor shall provide a fully executed copy of the Guarantee required by this provision concurrently with Contractor's delivery of this Agreement to City.

31.10 Savings Clause

If any provision of this Agreement is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

31.11 Exhibits Incorporated

Exhibits A through E are attached to and incorporated in this Agreement by reference.

31.12 Joint Drafting

This Agreement shall be interpreted as if it were drafted jointly by the Parties to the Agreement.

31.13 Attorneys' Fees and Litigation Costs

In the event either Party brings any action or proceeding to enforce or interpret the terms or provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees and other litigation costs and expenses, including without limitation expert witness fees, consultant fees and costs. Without limiting its scope in any way, this provision is expressly intended to, and shall, apply to fees and costs incurred in any appeal.

31.14 City's Authorized Agent

Notwithstanding anything contained herein to the contrary, and excepting amendments hereto and such actions set forth herein specifically calling for City Council action or approval,

the City Manager is designated as the City's authorized agent to take any action with regard to any matter, or enforce any right, set forth herein requiring action by the City.

31.15 Integrated Agreement

This Agreement contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals, and agreements between the Parties, whether written or oral. The Parties acknowledge this document has been executed with the consent and upon the advice of counsel. Each of the Parties acknowledges that no party or agent or attorney of any other Party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other party to execute this instrument.

31.16 Section Headings

The section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

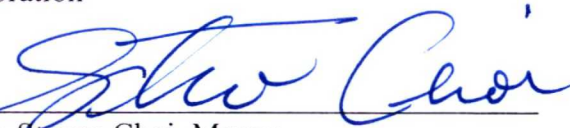
31.17 Compliance with Law

In providing the services required under this Agreement, both Parties shall at all times, at its sole cost, comply with all Applicable Laws, including the laws and regulations of the United States, the State of California, the provisions of the Municipal Code, and any federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended.

[Signatures on Next Page]

“City”

CITY OF IRVINE, a California municipal corporation

By: 
Dr. Steven Choi, Mayor

ATTEST:

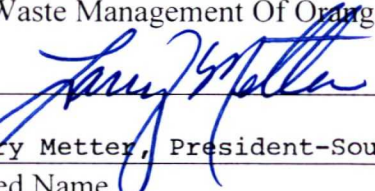
By: 
Molly McLaughlin, City Clerk

APPROVED AS TO FORM:

By: 
Jeffrey Melching, City Attorney

“Contractor”

WASTE MANAGEMENT COLLECTION & RECYCLING, INC., a California corporation dba Waste Management Of Orange County

By: 
Larry Metter, President-Southern California Area
Printed Name
Its: Managing Member

**Exhibit A
Maximum Rate Schedule**

Rates are per month except as noted

		<u>Service Component</u>	<u>Disposal Component</u>	<u>Total Rate</u>
Commercial 2 Cubic Yard Bin	1 time per week service	80.65	20.16	\$ 100.81
	2 times per week service	140.55	35.14	\$ 175.69
	3 times per week service	191.90	47.98	\$ 239.88
	4 times per week service	239.59	59.90	\$ 299.49
	5 times per week service	290.95	72.74	\$ 363.69
	6 times per week service	342.30	85.58	\$ 427.88
Commercial 3 Cubic Yard Bin	1 time per week service	85.58	21.39	\$ 106.97
	2 times per week service	150.39	37.60	\$ 187.99
	3 times per week service	206.67	51.67	\$ 258.34
	4 times per week service	259.29	64.82	\$ 324.11
	5 times per week service	315.57	78.89	\$ 394.46
	6 times per week service	371.84	92.96	\$ 464.80
Commercial 4 Cubic Yard Bin	1 time per week service	130.78	32.70	\$ 163.48
	2 times per week service	200.53	50.13	\$ 250.66
	3 times per week service	275.16	68.79	\$ 343.95
	4 times per week service	346.11	86.53	\$ 432.64
	5 times per week service	420.75	105.19	\$ 525.94
	6 times per week service	495.38	123.84	\$ 619.22
Multi-Family Recycling	1 time per week service	79.55	-	\$ 79.55
	2 times per week service	139.21	-	\$ 139.21
	3 times per week service	191.23	-	\$ 191.23
	4 times per week service	240.18	-	\$ 240.18
	5 times per week service	292.19	-	\$ 292.19
	6 times per week service	344.20	-	\$ 344.20
Organics 2 Cubic Yard Bin	1 time per week service	185.47	-	\$ 185.47
	2 times per week service	347.85	-	\$ 347.85
	3 times per week service	500.72	-	\$ 500.72
	4 times per week service	649.50	-	\$ 649.50
	5 times per week service	802.37	-	\$ 802.37
	6 times per week service	955.24	-	\$ 955.24
Organics 64 Gallon Cart	1 time per week service	46.37	-	\$ 46.37
	2 times per week service	86.96	-	\$ 86.96
	3 times per week service	125.18	-	\$ 125.18
	4 times per week service	162.38	-	\$ 162.38
	5 times per week service	200.59	-	\$ 200.59
	6 times per week service	238.81	-	\$ 238.81

Commercial Recycling is at No Charge.

Special Commercial Bin Services

Locking Bin	Rate per bin per month	\$ 6.47
Scout/Push Out 25 to 50 Feet	per bin per occurrence	\$ 2.58
Scout/Push Out 51 to 75 Feet	per bin per occurrence	\$ 3.88
Additional Bin Collection	per bin per occurrence	\$ 45.22
Sunday/Holiday Service	per bin per occurrence	\$ 64.61
Graffiti Removal	per bin per occurrence	\$ 32.30
Overload Bin (Snapshot)	per bin per occurrence	\$ 38.76

Contractor may apply a surcharge to bin customers who use trash compactors of not to exceed a multiplier of 3.0 times the standard bin rate for said service

Exhibit A
Maximum Rate Schedule

Rates are per month except as noted

		<u>Service Component</u>	<u>Disposal Component</u>	<u>Total Rate</u>
Commercial Account Auto Resume Rate				\$ 27.00
Commercial Recycling Contamination Rate	per bin per occurrence			\$ 49.46
Steam Cleaning Bins	per bin per occurrence			\$ 75.00
Bin Relocation	per bin per occurrence			\$ 50.00
Multi-family/Commercial Refuse Cart Rate	Rate per cart per month			\$ 50.41
Commercial Bulky Item Collection	per occurrence			\$ 25.00
Multi-Family Bulky Item Collection	per occurrence			\$ 97.17
Residential Weekly Service	Curbside	9.19	2.30	\$ 11.49
	Curbside-Low Volume	8.58	2.14	\$ 10.72
	Curbside Senior Rate	8.58	2.14	\$ 10.72
	Addition Cart -Solid Waste	2.78	0.69	\$ 3.47
	Additional Cart - Recycling	-	-	\$ -
	Additional Cart - Green Waste	2.78	0.69	\$ 3.47
<u>Optional Residential Services</u>				
Extra Pick Up	per occurrence			\$ 35.00
Walk-Out Service (qualified customers)	per occurrence (no charge)			\$ -
Walk-Out Service (optional service)	per month			\$ 25.00
Residential Account Auto Resume Rate	per occurrence			\$ 30.00
Auto-Resume Deposit	per occurrence			\$ 30.00
Curbside Food Waste/Organics Collection	Currently not provided			N/A
Steam Cleaning Carts	per cart per occurrence			\$ 25.00
Residential Cart Contamination Rate	per occurrence			\$ 10.00
At-Your-Door HHW Collection	optional service - per occurrence			\$ 145.00
At-Your-Door HHW Collection	qualified customer - per occurrence (no charge)			\$ -
Residential Sharps Collection	1 free quart-sized mail-back capped at 5% of total dwelling units. Refills available for \$35.00.			\$ 35.00
Additional Bulky Item Collection	per item			\$ 20.00
Damaged Cart				\$ 50.00
Rolloff				
40 Yard Pull Rate	per haul	283.01		\$ 283.01
10 Yard Pull Rate	per haul	283.01		\$ 283.01
Compactor Pull Rate	per haul	321.60		\$ 321.60
<u>Special Rolloff Services</u>				
Daily Rental (after 7 days with no dump)				\$ 5.52
Rolloff Box Standby/Dead Run Charge				\$ 52.45
Ticket Copies	per occurrence			\$ 1.31
Bin Relocation	per occurrence			\$ 50.35
Sunday/Holiday Service	per occurrence			\$ 57.70
Restart of Service	per occurrence			\$ 18.88
Rolloff Contamination Rate	per occurrence			\$ 49.46
Heavy Truck Service	per occurrence			\$ 75.00
Rolloff Disposal Fee	Tipping Fee for Landfill		32.97	\$ 32.97

EXHIBIT B

CONTAINER/BIN SPECIFICATIONS

- Contractor shall provide Container Specifications to City for approval. All Containers utilized by Contractor shall meet the standards of the industry and shall perform to the reasonable satisfaction of the City Manager in order to be utilized in City. Container sizes specified within this Agreement may vary by manufacturer type and specifications up to 10% more or less in volume than that identified.
- Each Refuse, Green Waste and Recycling Cart utilized by Contractor shall be labeled on the inside in English, Spanish and Mandarin and with graphics so as to: (1) explain/depict the items for which it is designated to Collect, and (2) identify the name of Contractor and Contractor's phone number for service related issues, including complaints. In addition, each such Cart shall include information, in a format acceptable to City (such as hot stamping or stickers), regarding Contractor's Bulky Item service, and a phone number that Customers can call to access such service.
- The body of all Carts shall be a uniform green color, with the lids of Refuse Carts being a uniform blue color, the lids of Recycling Carts being a uniform grey color, and the lids of Green Waste Carts being uniform green color.
- Any Cart distributed by Contractor in City after the Effective Date shall be newly manufactured and have never previously been used for the Collection of Solid Waste; excepting that Carts which have been refurbished such that they are "like new" may be used so long as their condition is satisfactory as determined by the City Manager.
- Upon request of any Customer, Contractor shall provide Bins with lids that close securely and which are capable of being locked at rates that do not exceed the maximum rates set forth in Exhibit A.

EXHIBIT C

CORPORATE GUARANTEE

THIS GUARANTEE (the "Guarantee") is given as of September 1, 2016, and is made with reference to the following facts and circumstances:

A. Waste Management Collection & Recycling, Inc., a California corporation ("Contractor") is a wholly owned subsidiary of Waste Management Holdings, Inc., a Delaware corporation ("Guarantor").

B. Contractor desires to enter into a franchise agreement with the City of Irvine ("City") with an Effective Date of September 1, 2016 entitled "Agreement Between City of Irvine and Waste Management Collection & Recycling, Inc. dba Waste Management of Orange County, for Solid Waste Handling Services" (the "Agreement").

C. It is a requirement of the Agreement that Guarantor guarantee Contractor's performance of the Agreement, including any ongoing obligations in the "Prior Agreements" (as that term is defined in the Agreement).

D. Guarantor is providing this Guarantee to induce the City to enter into the Agreement and acknowledges that it will benefit from Contractor entering into the Agreement because the Agreement will increase Contractor's gross income which is beneficial to Guarantor due to other financial transactions it conducts with Contractor.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guarantee of the Franchise.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely payment, performance, satisfaction and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to pay, perform, satisfy or observe. In the event that Contractor fails to pay, perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully pay, perform, satisfy or observe them in the place of Contractor (including by causing the services required of Contractor to be performed by a Solid Waste Enterprise acceptable to City). Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Contractor due to its breach of the Agreement. Included in the foregoing Guarantee, is a guarantee by Guarantor of any ongoing obligations of Contractor under the Prior Agreements. Guarantor further agrees to indemnify City against any losses City may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by City of any of its rights and remedies under the Agreement, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by City of any of its rights against Guarantor hereunder.

2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and, with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee

of payment and not of collection. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to Contractor in an action to enforce, or for damages for breach of the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this Guarantee or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of Contractor; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against Contractor; or (4) any merger or consolidation of Contractor with any other corporation, or any sale, lease or transfer of any or all the assets of Contractor. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code sections 2845, 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guarantee.

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guarantee. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. Term. This Guarantee is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guarantee without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder as long as there is any claim by the City against Contractor

arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.

5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guarantee or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guarantee shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guarantee, Guarantor agrees, in the event of Contractor's breach of its obligations, to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guarantee, or in any action or proceeding arising out of or relating to this Guarantee, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law: Jurisdiction.** This Guarantee is and shall be deemed to be a contract entered into in, and pursuant to the laws of, the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guarantee may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts, with venue resting in Orange County, California.

8. **Severability.** If any portion of this Guarantee is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guarantee, which shall be severable and continue in full force and effect.

9. **Binding On Successors.** This Guarantee shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guarantee, that its execution of this Guarantee has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the person signing this Guarantee on its behalf has the authority to do so.

11. **Prohibition Against Assignment.** Guarantor may not assign its obligations herein without the City's prior written consent.

12. **Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the City: City Manager
City of Irvine
One Civic Center Plaza
Irvine, CA 92623

To the Guarantor: Waste Management Holdings, Inc.
Attn: General Counsel
1001 Fannin Street, Suite 4000
Houston, Texas 77002

Guarantor:
Waste Management Holdings, Inc.

By: Devina A Rankin

Name: Devina A Rankin

Title: VP & Treasurer

By: Edwards EG2

Name: EDWARDS EG2

Title: ASSISTANT TREASURER

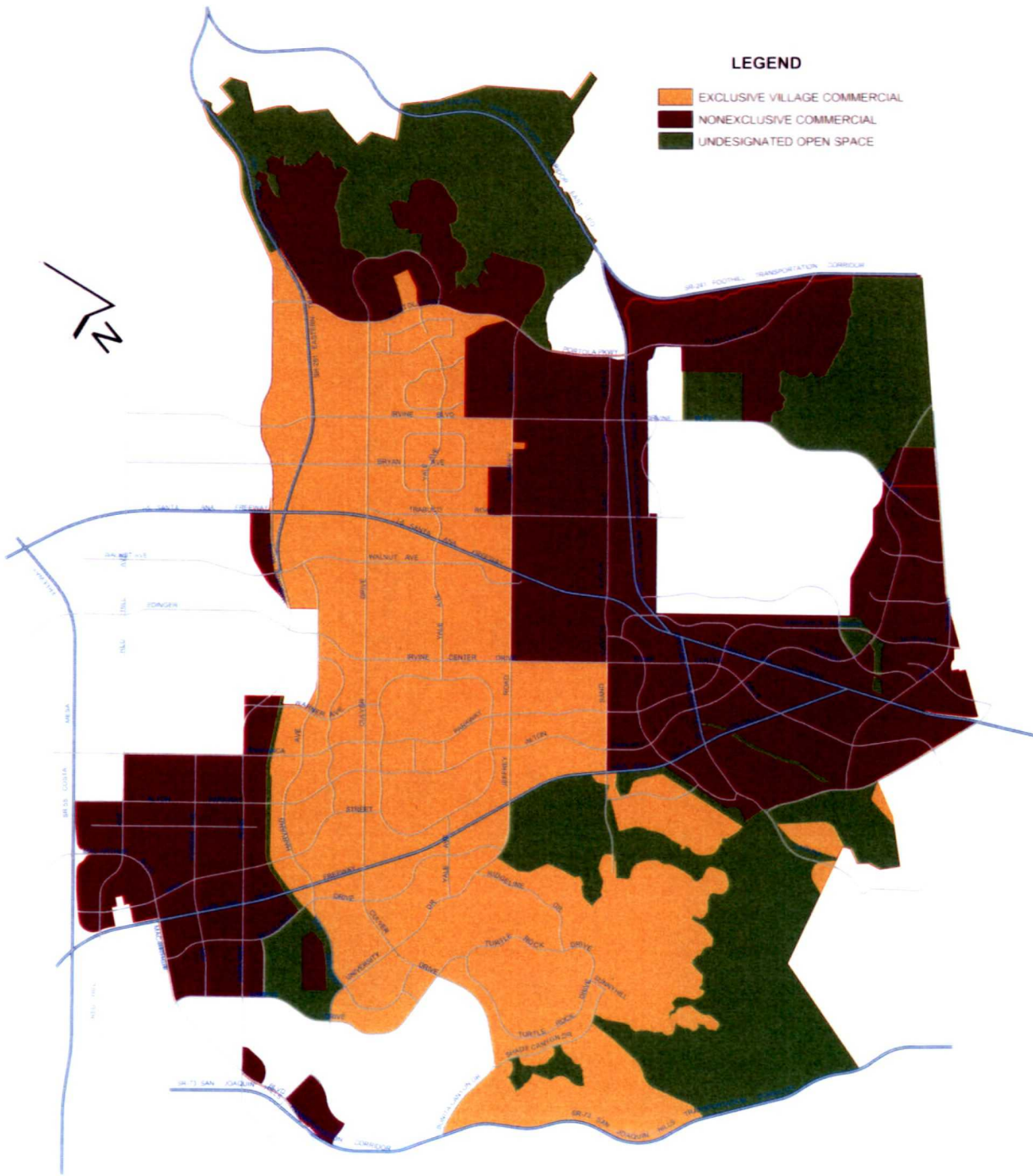
This Guarantee has been approved by adopted Resolution or Order of the Board of Directors of Waste Management Holdings, Inc. on September 30, 2013.



Exhibit D

CITY OF IRVINE

COMMERCIAL SOLID WASTE COLLECTION SERVICE AREAS



NOTE: Pursuant to California Public Resources Code Section 49520, et seq., some solid waste haulers may have legal rights to provide waste services to certain areas in the City regardless of the area designations on this map. All franchised haulers are eligible to provide collection of Construction and Demolition Debris and Temporary Bin Service, as defined in the Nonexclusive Franchise Agreement, to any premises within the City on an as needed and temporary basis. The terms and limitations of this agreement shall not apply to waste services provided at the facilities or properties of public agencies within the City limits that are not subject to the legal jurisdiction of the City of Irvine, including but not limited to public schools and colleges, and services to State, County and other governmental agencies.

EXHIBIT E

WORKERS' COMPENSATION INSURANCE CERTIFICATION

Contract Services Description: _____

WORKERS' COMPENSATION DECLARATION

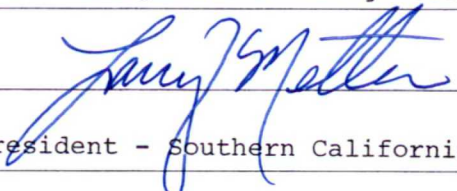
I hereby affirm under penalty of perjury one of the following declarations:

(CHECK ONE APPLICABLE BOX BELOW)

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this Agreement and shall submit insurance certificates evidencing such coverage as set forth herein.

I certify that, in the performance of the work under this Agreement, **I shall not employ any person** in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of Irvine and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, **if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions and immediately furnish insurance certificates** evidencing such coverage as set forth herein.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated:	
Contracting Firm:	Waste Management Collection and Recycling, Inc., dba Waste Management of Orange County
Signature:	
Title:	President - Southern California Area
Address:	9081 Tujunga Avenue, Sun Valley, CA 91352