

AGREEMENT
BETWEEN
CITY OF NORWALK
AND
ARAKELIAN ENTERPRISES, INCORPORATED (ATHENS SERVICES)
FOR
INTEGRATED SOLID WASTE MANAGEMENT SERVICES

* * *

May 2018

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Exhibits

1. Initial Maximum Rates
2. Example Rate Adjustment Formula
3. Contractor’s Faithful Performance Bond
4. Notary Certification

AGREEMENT

This Agreement for Integrated Solid Waste Management Services (hereinafter "Agreement") is entered into this 8th day of May, 2018, by and between the City of Norwalk, California, ("City") and Arakelian Enterprises, Incorporated (dba Athens Services) ("Contractor"), for the collection, transportation, recycling, processing, and disposal of solid waste and other services related to meeting the goals and requirements of the California Integrated Waste Management Act.

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 49100 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and,

WHEREAS, pursuant to California Public Resources Code Section 49300 and 49500 through 49524 inclusive, City has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified company for the collection, transfer and transportation, recycling, processing, and disposal of solid waste and other services related to meeting the diversion goals required by AB 939, and other requirements of the California Integrated Waste Management Act; and,

WHEREAS, City declares its intention to maintain reasonable rates and quality service related to the collection, transfer and transportation, recycling, processing, and disposal of solid waste and other services; and,

WHEREAS, in response to a Request for Proposals, Contractor has submitted a proposal to City and City selected the Contractor on the competitive advantages of that proposal over other proposals received by City; and,

WHEREAS, City and Contractor ("Parties") hereto desire to enter into said Agreement; and,

WHEREAS, City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling, processing and disposal of solid waste, including AB 939, 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 from premises in the City, transport for disposal, composting or other processing, and recycling of municipal solid waste which may contain hazardous substances; and further to confirm that as a material inducement to City entering into this Agreement, Contractor has agreed to fully indemnify City in connection with any claims, losses, liabilities, lawsuits or actions relating to the inadvertent or intentional collection, transportation and/or disposal of hazardous materials that may occur in connection with Contractor’s performance under this Agreement; and,

WHEREAS, Contractor has agreed, as part of this Agreement, acting as an independent contractor to provide such personnel, equipment and supplies as are necessary to ensure City complies with the requirements of Public Resources Code Section 49100, et seq.

NOW, THEREFORE, in consideration of the recitals above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE 1

DEFINITIONS

The terms used in this Agreement shall have the meaning set forth in this Article 1. In the event a term is not defined in this Article 1, then it shall have the meaning set forth in the Norwalk Municipal Code or in Division 30, Part 1, Chapter 2 of the California Public Resources Code (with precedence given to definitions in the Norwalk Municipal Code over conflicting definitions contained in the Public Resources Code). Except as provided in this Article 1, words beginning with lowercase letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meaning:

1.1 AB 939

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

1.2 Affiliate

“Affiliate” means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management shall be deemed to be “Affiliated with” Contractor and included within the term “Affiliates” as used herein. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business 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.

1.3 Billings

“Billings” or “Billing” or “Bill” means the statements of charges provided to Customers for services rendered by Contractor.

1.4 Bin

“Bin” means a Container with hinged lids and wheels with a capacity of at least one (1) cubic yard and not more than eight (8) cubic yards.

1.5 Bin Service

“Bin Service” means Solid Waste Handling Services in which a Bin is used for the Collection of Solid Waste.

1.6 Bulky Items

“Bulky Items” means 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, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); Green Waste bundles; yard debris and small pieces of wood limited to one (1) cubic yard of contained material; Electronic Waste; fluorescent bulbs; household batteries; and clothing. Bulky Items do not include car bodies, tires, Construction and Demolition Debris or items requiring more than two (2) persons to remove. Other items not specifically included or excluded above will be Collected provided that they are not more than eight (8) feet in length, four (4) feet in width, or more than one hundred and fifty (150) pounds. In the event a question ever 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.

1.7 CalRecycle

“CalRecycle” means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board, or CIWMB.

1.8 Cart

“Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated truck with a capacity between thirty-two (32) and one hundred and one (101) gallons.

1.9 City

“City” means City of Norwalk, California, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this Agreement.

1.10 City Manager

“City Manager” means the City Manager of the City of Norwalk and his or her designee.

1.11 Collect/Collection

“Collect” or “Collection” means to take physical possession, transport, and remove Solid Waste within and from City.

1.12 Commercial

“Commercial” refers to services performed at or for Commercial Premises.

1.13 Commercial Premises

“Commercial Premises” means Premises located within the boundaries of the City, occupied or used for any purpose other than residential uses. It includes Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein in the Norwalk Municipal Code or otherwise, for purposes of this Agreement, Premises upon which the following uses are occurring shall be deemed to be Commercial Premises: assisted living facilities, convalescent homes, dormitories, extended stay motels, group residential facilities, group care facilities, hotels, hostels, and motels.

1.14 Contractor

“Contractor” means Arakelian Enterprises, Incorporated (dba Athens Services), a corporation organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies and subcontractors, as permitted under Section 12.6.

1.15 Contractor’s Proposal

“Contractor’s Proposal” means the proposal submitted by Contractor to City on November 13, 2017 and revised rates submitted on April 23, 2018 in response to a Request for Proposals dated October 5, 2017. While there are provisions contained in Contractor’s Proposal, this Agreement supersedes Contractor’s Proposal and is the final written expression of the Parties’ Agreement. Contractor represents and warrants that all representations set forth in such proposal are true and correct.

1.16 Contractor Compensation

“Contractor Compensation” means the revenue received by the Contractor from Customers and City in return for providing services in accordance with this Agreement.

1.17 Construction and Demolition Debris

“Construction and Demolition Debris” means Solid Waste generated at a Premises that is directly related to construction or demolition activities occurring thereon.

1.18 Container

“Container” means any and all types of Solid Waste receptacles, including Carts, Bins and Roll-off Boxes.

1.19 CPI

“CPI” means the Consumer Price Index (CUUR0000SA0L1E) for All Urban Consumers (CPI-U), all items less food and energy index – U.S. city average, not seasonally adjusted.

1.20 Customer

“Customer” means a Person receiving Solid Waste Handling Services from Contractor pursuant to the terms of this Agreement.

1.21 Dispose/Disposal

“Dispose” or “Disposal” means the ultimate disposition of Solid Waste Collected by Contractor at a landfill or otherwise in full regulatory compliance.

1.22 Diversion

“Diversion” means any combination of waste prevention (source reduction), recycling, reuse and composting activities that reduces waste disposed at landfills, provided such activities are recognized by CalRecycle as Diversion in its determination of City’s Diversion rate and compliance with AB 939. CalRecycle may limit Diversion considered to be achieved through Transformation/waste-to-energy, use of Green Waste as alternative daily cover (“ADC”) and other activities.

1.23 Electronic Waste

“Electronic Waste” means electronic equipment, including stereos, televisions, computers and monitors, mobile telephones, VCRs, microwaves and other similar items commonly known as “brown goods” and “e-waste”.

1.24 Environmental Laws

“Environmental Laws” means 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 §6902 et seq.; the Federal Clean Water Act, 33 USC § 1251 et seq.; the Toxic Substances Control Act, 15 USC § 1601 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 California 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.; and Norwalk Municipal Code Chapter 8; as currently in force or as hereafter amended, and all rules and regulations promulgated there under.

1.25 Facility

“Facility” means any plant or site, owned or leased and maintained, operated or used by Contractor for purposes of performing under this Agreement.

1.26 Green Waste

“Green Waste” means tree trimmings, wood stumps, small pieces of wood, grass cuttings, dead plants, leaves, branches, flowers, plant stocks, and dead trees (not more than six (6) inches in diameter or forty-eight (48) inches in length) and similar materials.

1.27 Gross Receipts

“Gross Receipts” means any and all revenue received from Billings, and compensation in any form, received by Contractor or subsidiaries, parent companies or other Affiliates of Contractor, for the Collection and transportation of Solid Waste pursuant to this Agreement, in accordance with Generally Accepted Accounting Principles, including, but not limited to, Customer fees for Collection of Solid Waste, without subtracting Disposal fees, City fees or other fees or any other cost of doing business. Sales revenue from the sale of Recyclable Materials is excluded from Gross Receipts for the purpose of calculating Franchise Fees.

1.28 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 Waste”, “toxic waste”, “pollutants” 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 § 1802, 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, 25316, 25501 and 25501.1; (vi) the Clean Air Act, 42 USC § 7901 et seq.; and (vii) California Water Code § 13050; (b) any amendments, rules or regulations promulgated there under 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 as hazardous or toxic or regulated under any other applicable federal, state or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl’s (“PCBs”), petroleum, natural gas and synthetic fuel products and by-products.

1.29 Hazardous Waste

“Hazardous Waste” means 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 United States 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 there under.

1.30 Household Hazardous Waste (“HHW”)

“Household Hazardous Waste” means Hazardous Waste generated at Residential Premises.

1.31 Materials Recovery Facility (“MRF”)

“Materials Recovery Facility” means a permitted Solid Waste Facility where Solid Wastes or Recyclable Materials are sorted or separated for the purposes of Recycling, processing or composting.

1.32 Multi-Family Dwelling

“Multi-Family Dwelling” means any building or lot containing five (5) or more dwelling units. Multi-Family Dwelling units generally receive Refuse Collection service through the use of shared Bins, but may use Carts. Service is not dependent upon unit count unless specifically stated.

1.33 Person

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

1.34 Premises

“Premises” means any land or building in City where Solid Waste is generated or accumulated.

1.35 Rate Year

“Rate Year” means the period September 1 to August 31, for each year during the Term of this Agreement.

1.36 Recycle/Recycling

“Recycle” or “Recycling” means the processing of Recyclable Materials for the purpose of returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The Collection, transportation or Disposal of Solid Waste not intended for, or capable of, reuse is not Recycling. Recycling does not include use of Solid Waste for conversion to energy.

1.37 Recyclable Materials

“Recyclable Materials” means Solid Waste that is Source Separated, has some potential economic value, and is set aside, handled, packaged, or offered for Collection in a manner different from Refuse in order to allow it to be processed for Recycling.

1.38 Refuse

“Refuse” means putrescible and non-putrescible Solid Waste.

1.39 Residential

“Residential” refers to services performed at and for Residential Premises, which include both Single-Family Dwellings and Multi-Family Dwellings.

1.40 Residential Premises

“Residential Premises” means Premises upon which dwelling units exist, including, without limitation, Single-Family Dwellings, apartments, boarding or rooming houses, condominiums and mobile homes. Notwithstanding any provision to the contrary herein, in the Norwalk Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which the following uses are occurring shall not be deemed to be Residential Premises, and rather shall be deemed to be Commercial Premises: assisted living facilities, convalescent homes, dormitories, extended stay motels, group residential facilities, group care facilities, hotels, motels, and any other businesses not specifically listed at which residency is transient in nature and hence should be classified as Commercial Premises as determined by City on a case-by-case basis.

1.41 Roll-off Box

“Roll-off Box” means Solid Waste Collection Containers of 10 (ten) cubic yards or larger.

1.42 Single-Family Dwelling

“Single-Family Dwelling” means a dwelling unit in a building containing fewer than five (5) Residential dwelling units. Single-Family Dwelling units generally receive individual Cart Refuse Collection service, but service is not dependent upon unit count unless specifically stated.

1.43 Solid Waste

“Solid Waste” means all discarded putrescible and non-putrescible solid, semisolid, and liquid wastes, including Refuse, Construction and Demolition Debris, Bulky Items, Recyclable Materials, and Green Waste, or any combination thereof which are permitted to be disposed of in a Class III landfill, and which are included in the definition of “Non-hazardous Solid Waste” set forth in the California Code of Regulations.

1.44 Solid Waste Handling Services

“Solid Waste Handling Services” means the Collection, transfer, transport, Recycling, processing, and Disposal of Solid Waste.

1.45 Source Separated

“Source Separated” means the segregation by the Waste Generator of individual components of Solid Waste, which otherwise would become Refuse or garbage (such as glass bottles, metal cans, newspapers, plastic containers, organics, etc.) into separate Container(s) for the purpose of allowing the Recycling of such materials.

1.46 State

“State” means the State of California.

1.47 Transformation

“Transformation” means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting.

1.48 Transfer Station

“Transfer Station” means a Facility that receives Solid Waste from Collection vehicles and transfers the material to larger vehicles for transport to landfills and other destinations. Transfer Stations may or may not include MRFs, transferring residual Refuse (Refuse left after the sorting of Recyclable Materials) to landfills and Recyclable Materials, including Green Waste and/or Construction and Demolition debris, to processors, brokers or end-users.

1.49 Waste Generator

“Waste Generator” means any Person as defined by the Public Resources Code, whose act or process produces Solid Waste as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

ARTICLE 2

GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise, Indemnity of Award

Subject to the terms and conditions of this Agreement (including but not limited to the exclusions set forth in Section 2.9 hereof) and applicable State laws, and to the rights of State, county and school district facilities to use a Solid Waste enterprise other than Contractor, City hereby grants to Contractor and Contractor hereby accepts from City, for the Term hereof, the exclusive franchise, right and privilege to provide Solid Waste Handling Services at all Residential and Commercial Premises within the City (the “Franchise”).

2.2 Enforcement of Exclusivity

Contractor shall be responsible for enforcing the exclusivity of this Agreement. City shall have the right to enforce the exclusivity provisions hereof if, in its absolute and sole discretion, it chooses to do so, but shall have no obligation to do so for the benefit of Contractor or otherwise. City additionally shall have the right, but not the obligation, to request that Contractor enforce the exclusivity provisions hereof. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City. For example, Contractor may be asked to notify City of inappropriately placed Containers and to place warning tags on such Containers. City may direct Contractor to impound such Containers in accordance with the City’s Municipal Code; Contractor may be entitled to charge Container owners City-approved fees for such impounding with advance written City approval. If Contractor requests that City take administrative, law enforcement, or other legal action to protect Contractor’s exclusive rights, or otherwise enforce the exclusivity of this Agreement (including the adoption of any resolution or ordinance intended to facilitate the enforcement of the exclusive rights granted herein), Contractor shall reimburse City for all administrative, law enforcement, or other legal costs and fees related to any such action. Contractor’s obligation to reimburse City shall not apply to any criminal enforcement by City.

2.3 Effective Date

The “Effective Date” of this Agreement shall be the date which the City Council approves this Agreement.

2.4 Term of Agreement

The term of this Agreement (the "Term") shall commence August 1, 2018 and expire July 31, 2026, subject to extension as provided in Section 2.5, as applicable. Notwithstanding the foregoing, the unexcused failure or refusal of Collector to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of City, for earlier termination of this Agreement for cause in accordance with the procedures elsewhere contained herein.

2.5 City's Option to Extend Term

City shall have the sole option to extend the Term of this Agreement up to twenty-four (24) months following the Agreement Term under Section 2.4. City may, upon at least ninety (90)-day advance written notice to the Contractor prior to the expiration of the Term of this Agreement, exercise this extension option. If City provides this extension notice, the Agreement will automatically renew monthly, up to a maximum of twenty-four (24) months. This extension period shall terminate, upon the earlier of: (i) the expiration of the aforementioned twenty-four (24) months, or (ii) the date City instructs Contractor that the contact will end, provided written notice of termination is provided to Contractor by City at least ninety (90) days prior to this termination date.

2.6 Representations and Warranties of Contractor

Contractor hereby covenants, represents, and warrants the following to City for the purpose of inducing City to enter into this Agreement and to consummate the transaction contemplated hereby, all of which shall be true as of the date of this Agreement and as of the Effective Date:

- a) Contractor is wholly owned by Arakelian Enterprises, Incorporated (dba Athens Services, which is duly organized and validly existing as a corporation under the laws of the State of California.
- b) Neither the execution of this Agreement nor the delivery by Contractor of services nor the performance by Contractor of its obligations hereunder: (1) conflicts with, violates or results in a breach of any applicable law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor) or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument; or

- (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.
- c) There is no action, suit or other proceeding as of the date of this Agreement, at law or in equity, or to the best of Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against Contractor which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Contractor or in connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of Contractor to perform its obligations hereunder or which would have a material adverse effect on the financial condition of Contractor. This provision may be waived by City acting through its City Manager.
 - d) Contractor has no knowledge of any applicable law in effect as of the date of this Agreement that would prohibit the performance by Contractor of this Agreement and the transactions contemplated hereby.
 - e) Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding this Agreement and the work to be performed by it, and is satisfied that those conditions and circumstances will not impair its ability to perform the work and provide the Collection services required by this Agreement.
 - f) The information supplied by Contractor in all submittals made in connection with negotiation and execution of this Agreement, including all materials in Exhibits of this Agreement, and all representations and warranties made by Contractor throughout this Agreement are true, accurate, correct and complete in all material respects on and as of the Effective Date of this Agreement. Inaccuracies in Contractor's Proposal, such as material omissions of past and pending litigation as requested under the Request for Proposals through which this Agreement was procured, are grounds for termination of this Agreement.
 - g) Contractor's representative, designated in Section 5.2.4, shall have authority in all daily operational matters related to this Agreement. City may rely upon action taken by such designated representative as action of Contractor unless the actions taken are not within the scope of this Agreement.

2.7 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:

- a) Accuracy of Representations. 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.
- b) Absence of Litigation. There shall be no litigation pending in any court challenging the award of this franchise to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance. This provision may be waived by the City, acting through its City Manager.
- c) Furnishing of Insurance, Bond, and Letter of Credit. Contractor shall have furnished evidence of the insurance, bonds and letter of credit required by Article 9, and shall comply with all ongoing requirements relating thereto.
- d) Contractor shall have paid the contracting fee to City, as provided in Section 3.1.

2.8 Delegation of Authority

The administration of this Agreement by City shall be under the supervision and direction of the City Manager's office and the actions specified in this Agreement, unless otherwise stated, shall be taken by the City Manager. This Section shall in no way be interpreted to obviate required City Council action if so provided in the Norwalk Municipal Code.

2.9 Limitations to Scope

Notwithstanding any provision to the contrary contained herein, the exclusive franchise, right and privilege to provide Solid Waste Handling Services at Premises within the City granted to Contractor by this Agreement specifically excludes the following services, which services may be provided by Persons other than Contractor and which may be the subject of other permits, licenses, franchises or agreements issued or entered by City:

- a) The sale or donation of Source Separated Recyclable Material by the Waste Generator to any Person or entity other than Contractor; provided, however, if the Generator is required to pay monetary or non-monetary consideration for the Collection,

- transportation, transfer, or processing of Recyclable Material, even if the Waste Generator receives a reduction or discount in price (or in other terms of the consideration the Waste Generator is required to pay), the transaction shall not be considered a sale or donation;
- b) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Waste Generator, and which is transported personally by such Waste Generator (or by his or her full-time employees) to a processing or Disposal Facility in a manner consistent with all applicable laws and regulations;
 - c) Green Waste removed from a Premises by a gardening, landscaping, or tree trimming contractor, utilizing its own equipment, as an incidental part of a total service offered by that contractor, rather than as a hauling service;
 - d) The Collection, transfer, transport, Recycling, processing, and disposal of animal remains from slaughterhouse or butcher shops for use as tallow;
 - e) The Collection, transfer, transport, Recycling, processing, and disposal of by-products of sewage treatment, including sludge, sludge ash, grit and screenings;
 - f) The Collection, transfer, transport, Recycling, processing, and disposal of Hazardous Substances, Hazardous Waste, Household Hazardous Waste and radioactive waste regardless of its source;
 - g) The Collection transfer, transport, Recycling, processing, and Disposal of Construction and Demolition Debris provided it is removed by a licensed construction or demolition company or as part of a total service offered by said licensed company or by City, where the licensed company utilizes its own equipment and staff;
 - h) The Collection of Refuse and/or Recyclables from public litter Containers at bus stops;
 - i) The Collection, transfer, transport, Recycling, processing, and Disposal of Solid Waste generated from City-owned and/or operated premises, public works projects, City-sponsored events or other City-related activities, by City through City officers or employees in the normal course of their City employment; and,
 - j) Solid Waste Handling Services for governmental agencies other than City, which may have facilities in City, but over which City has no jurisdiction in connection with the regulation of Solid Waste.

The exclusive franchise, right and privilege to provide Solid Waste Handling Services within the City granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable State and federal laws, now in effect and adopted during the term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. In the event that future interpretations of current law, future enactments or developing legal trends 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.

2.10 City's Right to Direct Changes

2.10.1 General

City may direct Contractor to perform additional services (including new Recycling or other Diversion programs, additional Solid Waste processing, etc.) or modify the manner in which it performs existing services or Bills for services. Pilot programs and innovative services which may entail new Collection methods, and different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which City may direct. Contractor acknowledges that State law may increase the Diversion requirement or require new programs during the term of this agreement, and Contractor agrees to propose services to meet such new requirements. Contractor shall be entitled to an adjustment in its Contractor Compensation for providing such additional or modified services, including a pre-tax profit factor equal to ten percent (10%) of the incremental cost of such additional or modified services. City may utilize cost components included in the Contractor's Proposal in calculating equitable rate adjustments. If City and Contractor cannot agree on compensation for new or additional services within ninety (90) days from the date City first requests a proposal from Contractor, then City may contract with other parties for such services, which shall be considered exempt from the exclusivity provisions of Section 2.2.

2.10.2 New Diversion Programs

Contractor shall present, within thirty (30) days of a request to do so by City, a proposal to provide additional or expanded Diversion services. The proposal shall contain a complete description of the following:

- Collection methodology to be employed.

- Processing methods.
- Equipment to be utilized (number of vehicles, types, etc.).
- Labor requirements (number of employees by classification).
- Type(s) of Containers to be utilized.
- Type(s) of material to be Collected.
- Provision for program publicity/education/marketing.
- One (1)-year projection of the financial results of the program's operations in an operating statement format, including documentation of the key assumptions underlying the projections, and the support for those assumptions.

2.11 Ownership of Solid Waste

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 Solid Waste Collected by Contractor in the City. Rather, the Parties intend that whatever, if any, title in and to the Solid Waste that is Collected by Contractor which 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. Subject to the provisions of this Agreement, and unless City exercises its rights to direct the location for Disposal and processing of Solid Waste, Contractor shall have the right to retain, Recycle, process, dispose of, and otherwise use Solid Waste Collected pursuant to the terms hereof in any lawful fashion or for any lawful purpose; and, further, shall have the right to retain any benefit resulting from its right to retain, Recycle, process, dispose of, or reuse the Solid Waste which it Collects. City's right to redirect Solid Waste is not intended to impact Contractor's right to retain Recyclables revenue pursuant to Section 4.2.4 of this Agreement. Ownership of Solid Waste shall transfer to Contractor when Customer places it at point of Collection.

2.12 Contractor Status

Contractor represents and warrants that it is duly organized, validly existing and in good standing under applicable laws. It is qualified to transact business in the State of California and

has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

2.13 Contractor Authorization

Contractor represents and warrants that it has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of Contractor (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of Contractor have authority to do so. Contractor shall authorize one (1) employee for the City as a single point of contact for issues arising under this Agreement, and Contractor acknowledges and agrees that City may expect and assume that this employee's actions are taken on behalf of and with the full approval of Contractor.

2.14 Permits and Licenses

Contractor shall acquire and maintain a City business license and all necessary permits and licenses for the Collecting, transporting, processing, and storing of Solid Waste including Recyclables, disposing of Solid Waste, and the Recycling of Recyclables as required under this Agreement. Failure to maintain all required permits shall be deemed a material breach of contract for which City may terminate this Agreement as provided in Article 11. Contractor must follow requirements of the Norwalk Municipal Code.

ARTICLE 3

FEES PAID TO THE CITY

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 as specified herein, Contractor shall provide the following:

3.1 Contracting Fee

Contractor shall pay to City a "Contracting Fee" in a one (1) -time lump sum payment of Two Hundred Thousand Dollars (\$200,000.00) within seven (7) days of execution of this Agreement to reimburse City for costs it incurred in connection with entering this Agreement.

3.2 Franchise Fee Amount

In consideration of the exclusive Franchise granted pursuant to this Agreement, Contractor shall pay to City a "Franchise Fee," equal to fifteen percent (15%) of the Gross Receipts received by Contractor.

3.3 Timing and Submittal of Quarterly Franchise Fee Payments

On or before the twentieth (20th) day following the end of each service quarter (November 20th, February 20th, May 20th, August 20th) during the Term of this Agreement, Contractor shall remit the Franchise Fee based upon services provided to City the previous service quarter. If the fees are not paid on or before the twentieth (20th) day, Contractor shall, along with fee payment, pay the maximum interest rate permitted by law on any balance not paid by the due date.

Contractor shall prepare and submit a fee payment statement with each fee payment that includes receipts by sector, by month, and supporting fee calculations for each fee.

Franchise Fee payments are based upon the prior quarter's Gross Receipts, and some Customers may pay late; therefore, payments will continue to be due following termination of Contractor's provision of service under this Agreement for as long as Contractor receives any Gross Receipts derived from providing service under this Agreement.

3.4 Future Fees

In the event that City implements a new fee (or increases an existing fee beyond the amount contemplated under this Agreement), Contractor shall be entitled to a rate adjustment in an

amount sufficient to recover the fee from Customers. City may elect to have Contractor pay monthly, or on another schedule as City identifies. City may set deadlines and late fees, and additional fees would be subject to audit.

ARTICLE 4
DIRECT SERVICES

4.1 Refuse

4.1.1 General

The work to be done by Contractor pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that all Customers are provided reliable, courteous and high-quality Solid Waste Handling Services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this Section, whether such other aspects are enumerated elsewhere in the Agreement or not.

4.1.2 Residential Cart Refuse Collection

Contractor will supply each Residential Refuse Cart Customer with ninety-six (96)-gallon Refuse Cart(s), as described in Section 4.5.1.1, except as provided in Section 4.5.1.4. Residential Customers shall be charged based upon the number of Refuse Carts being used.

Contractor shall Collect Refuse delivered for Collection in accordance with this Section not less than once per week. The primary collection location shall be curbside, but may vary for premises adjacent to a paved alley or other reasons. The designated Collection location of Containers, if disputed by the Customer or Contractor, shall be determined by City. Additionally, if in City's opinion the existing Collection location is inappropriate, City may require the Customer and/or the Contractor to relocate the Collection location.

4.1.3 Refuse Cart Overage

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two (2) annual pickups per calendar

year of material that does not fit in the Refuse Cart(s) at no additional charge. One (1) pickup shall consist of up to the equivalent of five (5) large bags, boxes or barrels of Refuse.

Additionally, Contractor shall Collect all additional Refuse placed out for Collection in the Residential Customer's own containers (bags, barrels, etc.) at no additional charge for two (2) weeks beginning each December 26. This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Sections 1.6 and 4.1.12.

Residential Customers may be charged per pickup in accordance with the approved rate schedule for overage pickups above two (2) per year and outside the two (2)-week period beginning December 26.

Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

4.1.4 Walk-Out Service for Disabled Customers

Contractor shall provide Walk-Out Service to disabled Customers at no additional charge. In order to qualify as disabled under this Section, Customers must provide evidence that they are physically unable to move the Containers, such as a doctor's note. Additionally, Walk-Out Service need not be provided if an able-bodied person resides with the disabled Customer. Customers may be asked periodically, but no more than once per year, to reconfirm the physical disability and sign an affidavit that no able-bodied residents reside at the Premises.

Walk-Out Service means that Contractor will remove Refuse, Recyclable and Green Waste Carts and Cart overages (per Section 4.1.3) from Customer's storage area, place them out for Collection, and return Carts to Customer's storage area after Collection, ensuring that all doors or gates are closed securely.

4.1.5 Bin Refuse Collection and Processing

Contractor shall provide Bin Service to Residential Customers not receiving Cart service, and Commercial Customers. Contractor shall Collect and remove all Refuse that is placed in Bins at least once per week, and more frequently if required to handle the waste generated at the Premises where the Bins are located. City shall make final determination as to the number and size of Containers, shared bin requests due to space limitations at the Premises, and frequency

of Collection to be provided to Customers. Special consideration shall be given when determining the pickup areas to ensure that the flow of traffic is not impeded.

Contractor shall provide one (1)-, two (2)-, three (3)-, four (4)- and six (6)-cubic yard Bins upon request. Contractor will service Bins equipped with compaction devices or “compactors” that attach to the Bins. The provision of the compaction device itself is outside of this Agreement.

Contractor shall process all Solid Waste Collected in Bins to recover Recyclable Materials prior to landfilling.

4.1.6 Temporary Bin Service and Processing

Contractor shall provide exclusive temporary Bin Service to Customers upon request, and will process all Solid Waste Collected to recover Recyclable Materials prior to landfilling. Contractor must deliver a temporary Bin to a Customer within twenty-four (24) hours of request (Sundays and holidays identified in Section 4.6.1.1 excluded). Rates for temporary Bin Service are listed separately in the approved rate schedule. Failure to guarantee and/or provide twenty-four (24)-hour delivery of a temporary Bin within this timeframe may result in an assessment of liquidated damages for each day Contractor is late in providing the temporary Bin, and/or City may authorize another service provider to provide such service.

4.1.7 Commercial Premises Cart Service

Contractor shall offer Collection in ninety-six (96)-gallon Refuse Carts to Customers at Commercial Premises that do not have space for a Bin. Customers with space constraints may request sixty-four (64)- or thirty-two (32)-gallon Carts; if smaller Carts are used the per month Commercial Cart rate shall be charged for up to each ninety-six (96) gallons of capacity requested by Customer. If Contractor and 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, City shall make the final determination as to whether Collection in a Refuse Cart may occur or if shared bins are necessary. In the event shared bins are utilized, Contractor will bill the customers directly utilizing a prorated rate.

4.1.8 Over-Loaded Bin Procedures

Contractor shall follow this procedure to address Customers with overloaded Bins:

1. Contractor shall digitally photograph overloaded Bins. Contractor shall empty overloaded Bins.

2. If waste has overflowed and Contractor must clean up overflow and place it in the Bin for Collection. Contractor may Bill Customer an extra pickup charge.
3. Contractor shall mail Customer the photograph with a letter explaining:
 - The overloading incident;
 - Why an extra pickup charge was assessed (if applicable);
 - The requirement for Bins not to be filled to the point where the Bin lid will not close; and,
 - Options to address the issue including a service level increase, Bin locks, and Recycling services.

Contractor must attempt to contact the Customer and to work with the Customer to prevent on-going overloading issues. If the Customer refuses to address the issue, Contractor may Bill Customer a service fee in accordance with the approved rate schedule each time overloading occurs.

Contractor may not unilaterally increase Contractor's service levels or install locks without advanced approval of the Customer, or the City Manager or his or her designee. Customers may appeal any action by Contractor under this Section (including fees or service increase) to the City Manager or designee, and the City Manager or his or her designee's determination shall be final.

4.1.9 Scout and Push-Out Service

Contractor may determine it necessary to use a scout vehicle (or Bin truck) to position Containers for Collection, or find that it is necessary to manually move Containers a significant distance to position for Collection. Contractor may not charge a fee for such services. Any disputes between Customer and Contractor regarding the provision of scout and push-out service will be referred to the City Manager, whose decision shall be final.

4.1.10 Locking Bins

Contractor shall provide locking Bin Service (including providing the hasp and lock and servicing the lock) to Customers that request such service in accordance with the approved rate schedule.

4.1.11 Roll-off Box Service and Processing

Contractor shall provide exclusive permanent and temporary Roll-off Box Collection service upon request. Contractor shall process all Solid Waste Collected in Roll-Off Boxes to recover Recyclable Materials prior to landfilling. Contractor must deliver a temporary Roll-off Box to a Customer within twenty-four hours (24) hours of request (Sundays and holidays identified in Section 4.6.1.1 excluded). Failure to guarantee and/or provide twenty-four (24)-hour delivery of a Roll-Off Box within this timeframe may result in an assessment of liquidated damages for each day Contractor is late in providing the Roll-Off Box, and/or City may authorize another service provider to provide such service.

Contractor will provide standard ten (10)-, twenty (20)-, thirty (30)- and forty (40)-cubic-yard standard Roll-off Boxes. The provision of compactor Roll-off Boxes, which are enclosed Containers attached to a compaction device, is not included in this Agreement. Providing Collection services for such compactor Roll-off Boxes is included.

Roll-off Box service shall be Billed at a rate inclusive of service and disposal or processing of up to seven (7) tons for standard Roll-off Boxes, up to nine (9) tons for compactor Roll-off Boxes, and up to ten (10) tons for clean dirt Roll-off Boxes. Tonnage above included tons shall be billed at the approved per ton rate based on actual additional tonnage or fraction thereof.

4.1.12 On-Call Bulky Item Pickup

Contractor shall provide Bulky Item pickup service to all Residential Customers (including both Cart and Bin Customers) on the regularly scheduled collection day.

Each Residential Refuse Cart Customer shall be entitled to fifty-two (52) Bulky Item pickups per calendar year at no additional charge. Each unit in a Multi-Family Dwelling shall be entitled to up to twelve (12) annual pickups at no additional charge. The property manager shall call in the pickup requests.

Each pickup consists up to five (5) items. A box of household batteries, compactor fluorescent bulbs, or small electrical devices such as telephones would be considered one (1) item.

Contractor shall Collect all Bulky Items as defined in Section 1.6 including items referred to as Electronic Waste. Contractor is not required to Collect single items that cannot be handled by two (2) workers. Hazardous Substances and Hazardous Waste, including waste oil or anti-freeze, need not be Collected, with exception of Electronic Waste and other universal wastes

(such as fluorescent bulbs and household batteries) specifically identified as part of this program.

Residential Customers that exceed the number of free Bulky Item pickups, and all Commercial Customers, may receive Bulky Item Collection under the same terms for a fee, in accordance with the approved rate schedule in Exhibit 1.

4.1.13 Bulky Item Diversion

Bulky Items Collected by Contractor in accordance with Section 4.1.12, 4.4.3, and 4.4.4, or otherwise Collected under this Agreement, may not be landfilled or disposed of until the following hierarchy of Diversion efforts has been followed by Contractor:

- 1) Reuse as is;
- 2) Disassemble for reuse or Recycling;
- 3) Recycle;
- 4) Dispose.

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, unless such items have been designated for Disposal.

4.1.14 Disposal of Electronic and Other Special Wastes

Contractor shall divert waste requiring special handling, such as Electronic Waste and other universal wastes Collected in accordance with Sections 4.1.12, 4.4.3 or 4.4.4, or by other means under this Agreement, by taking these goods to a properly permitted Facility, and not by landfilling.

Contractor may encourage Customers through public education materials to bring small items requiring special handling, such as fluorescent bulbs or batteries, to a local HHW drop-off center, but will properly process such material received through the provision of services under this Agreement at no additional charge.

4.1.15 Commercial/Multi-Family Organics Program

Contractor shall provide all Customers required to participate in an Organics (Food Waste and Green Waste) Diversion program with a program(s) compliant with State and CalRecycle

mandatory Organics Recycling requirements under Public Resource Code 42649.8-42649.86 (AB 1826).

Contractor shall include an organics recovery component in the mixed waste processing program required under Sections 4.1.5, 4.1.6 and 4.1.11. This processing shall comply with Public Resource Code Section 42649.81(b)(3).

Contractor will provide an organics program utilizing a source separation process. An organics recovery component will be provided as it applies to collection and processing of permanent cart and bins, temporary bins, and roll -off boxes. The types of organics collection containers to be utilized will be dependent on customer needs, space constraints, and routing. This may include two (2) to three (3) cubic yard bins, ninety-six (96)-gallon carts, and/or commercial compactors.

Contractor will provide this source-separated program for Commercial and Multi-family organics at a rate that is equal to the refuse rate for the same size and frequency of service.

For the initial two (2)-year period of this Franchise Agreement (August 1, 2018 through August 31, 2020), Contractor will maintain the current level of service for commercial customers requiring an organics program. Contractor will evaluate and provide the appropriate bin/cart combination to provide organics collection that will result in commercial Customers paying for the same level of service or less than what they are currently receiving. As an example, if a customer is currently receiving two (2) three (3)-yard bins at a frequency of once per week pick up and now requires organics collection services, Contractor will evaluate and provide a combination of carts/bin that will result in that customer paying a maximum of what it now costs to receive two (2) three (3)-yard bins at a frequency of once per week pick up utilizing the approved rates as outlined on Exhibit 1.

4.2 Recycling

4.2.1 Residential Cart Recycling Collection

Contractor shall provide all Residential (Single or Multi-Family) Customers receiving Cart Refuse Collection with a ninety-six (96)-gallon Cart for Collection of Recyclable Materials ("Recycling Cart(s)"), or such smaller cart as authorized per Section 4.5.1.4, and shall Collect all Recyclable Materials placed therein for Collection not less than once per week. Contractor shall Collect Recyclable Materials from each Customer on the same day as Customers' Refuse Cart is

Collected. Customers that regularly fill their Recycling Cart(s) may request additional Recycling Cart(s) at no additional charge.

Contractor shall have a Recycling program whereby it Collects at a minimum: newspaper, mixed white and color paper (phone books, magazines, computer paper, junk mail, brochures and paper bags), cardboard, cereal boxes, drink boxes, wrapping paper, juice and milk cartons, egg cartons, foam cups and plates, glass bottles and jars, aluminum and tin/steel cans, empty aerosol cans, aluminum foil, plastic bottles and containers, detergent bottles, plastic bags, and plastic milk jugs. Contractor will update public education materials accordingly as new items are added to those recovered by the Recyclables processing facility(ies) used.

4.2.2 Commercial Recyclables Collection

4.2.2.1 Processing of Mixed Waste

Contractor shall assist the City in meeting mandatory Commercial Recycling program requirements at no additional charge, including providing reporting that may be required. The material recovery facility used to process Bin and Roll-Off Box mixed waste under Sections 4.1.5, 4.1.6 and 4.1.11 must maintain compliance with CalRecycle standards for a high diversion facility as defined by CalRecycle for the purpose of meeting mandatory commercial recycling requirements through the processing of mixed waste.

4.2.2.2 Source-Separated Collection

Contractor shall provide Source-Separated Recyclables Collection service to Multi-Family Bin and Commercial Customers requesting such service in accordance with the approved rate schedule for Recycling Carts and Bins. The standard Recycling Cart size shall be ninety-six (96) gallons, but Customers may request smaller Carts. Source Separated Recyclables shall be Collected in a dedicated Recycling truck, separate from mixed Refuse loads.

4.2.3 Warning Notice

Contractor shall place a red tag or other warning notice approved by the City on all Refuse, Recyclable Material or Green Waste loads that are contaminated, indicating to the Customer why the load was not Collected and, if applicable, diverted, or if the Recycling or Green Waste Container was sufficiently contaminated that it had to be Collected as Refuse, and providing Contractor's phone number. For Customers with off-site management such as small apartment buildings, Contractor shall also mail a copy of the warning to the Customer's Billing address.

Contractor shall notify City on a monthly basis of any warning notices issued pursuant to this Section, and shall provide copies of such warnings to City upon request. With prior written City authorization, Contractor may remove Recycling and Green Waste Containers from habitual contaminators that have received a total of three (3) warnings on a Container in any six (6)-month period. Recycling and Green Waste Containers will be returned after six (6) months, or upon direction of the City, or if there is a change of occupancy.

4.2.4 Marketing and Sale of Recyclable Materials

Contractor shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Contractor may retain revenue from the sale of Recyclable Materials, and shall report the amount of such revenues to City upon request.

4.2.5 Minimum Diversion Requirements

Contractor shall divert from landfilling a minimum of fifty percent (50%) of all Solid Waste it Collects under this Agreement. Recycling of materials not Collected by the Contractor is not to be counted towards meeting this requirement. For the purposes of this Section, diversion includes Recycling, Transformation and other forms of converting Solid Waste into energy only to the extent that such diversion is accepted by the State toward meeting the City's diversion goal under AB 939.

If a form of Diversion, such as any form of Transformation or the use of Green Waste as alternative daily cover at landfills, ceases to provide diversion credit for any reason (regulatory change, facility closure, other), this will not relieve Contractor of the requirement to meet this minimum Diversion goal, and no extraordinary rate increase shall be provided if Contractor must implement alternative programs to meet this minimum requirement.

4.2.6 Construction and Demolition Debris

All Construction and Demolition Debris ("C&D") loads shall be delivered to Recycling Facilities for processing, or diverted to qualified inert facilities for Construction and Demolition Debris where quantities would not be counted as disposal for AB 939 compliance purposes. No such loads are permitted to be delivered to a landfill unless Company obtains written approval from City permitting Disposal of specific loads. Contractor shall divert from landfill disposal a minimum of seventy-five percent (75%) of the C&D debris collected.

4.3 Green Waste Program

4.3.1 Residential Green Waste Cart Collection

Contractor shall provide all Residential Customers receiving Cart Refuse Collection with a ninety-six (96)-gallon Cart for Collection of Green Waste (“Green Waste Cart(s)”), or such smaller cart as authorized per Section 4.5.1.4, and shall Collect all Green Waste placed therein for Collection not less than once per week. Contractor shall Collect Green Waste from each Customer on the same day as Customers’ Refuse Cart is Collected.

Customers that regularly fill their Green Waste Cart may request one (1) additional Green Waste Cart at no additional charge. If additional Green Waste Carts are requested, Contractor may charge a fee for each Green Waste Cart above two in accordance with the approved rate schedule. See Section 4.5.1.1 for Cart distribution.

Green Waste bundles not placed in the Cart for Collection may be Collected as Bulky Items per Section 4.1.12.

4.3.2 Holiday Tree Collection Program

Contractor shall operate an annual holiday tree Collection program, Collecting all holiday trees placed out for Collection on Collection day by Residential Cart or Bin Customers for a minimum of three weeks following December 25. After this period, trees will be Collected as Bulky Items under Section 1.6. Trees up to eight (8) feet in length will be Collected and diverted without Customers needing to cut them. Contractor may request that Customers with larger trees cut the trees to pieces no longer than eight (8) feet.

Contractor will divert all holiday trees from landfilling, with the exception of trees that cannot be diverted due to flocking, tinsel or ornaments.

4.3.3 End Uses for Green Waste

Contractor shall divert Green Waste materials Collected through weekly Cart Collection, Bulky Item Green Waste bundle Collection and holiday tree Collection from Disposal. Contractor must provide end uses for Green Waste that maximize Diversion credits for City according to regulations established by CalRecycle. Green Waste may only be used as alternative daily cover at landfills, or “ADC,” to the extent that the City will get full Diversion credit for its use. If Diversion credit is no longer available for Green Waste used as ADC, Contractor is responsible for finding an alternative Diversion method at no additional cost to the City or Customers.

Contractor is responsible for monitoring how the Green Waste will be diverted at selected facilities and for selecting alternative facilities if necessary to ensure full Diversion credit. Failure to do so places the Contractor in default. City has the option, but not obligation, to direct Contractor where to deliver the material.

4.3.4 Backyard Compost Program

Contractor shall offer composting bins and worm bins to each Residential Customer that requests one, and bill the Customer no more than a \$35.00 co-pay. At no additional cost, Contractor shall offer composting classes at least twice per year, and will create and make available a brochure that educates Customers on composting.

4.3.5 Mulch Give-A-Ways

Contractor shall conduct two compost/mulch give-a-ways each calendar year for City Residents. The time and location of the events shall be coordinated with City, and City may require that they be scheduled in conjunction with other City events.

4.4 City Services

4.4.1 City Facilities Collection

Contractor shall Collect and dispose of all Refuse, Recyclable and Green Waste material put in Containers for Collection at Premises owned and/or operated by the City now and in the future at no charge, including no charge for locking Bins or other special services. Contractor shall ensure a sufficient number of Solid Waste Containers are provided at all City facility locations to meet Collection needs. Service levels and number of facilities serviced may increase during the Term of this Agreement without any additional compensation paid to the Contractor. Such Premises include, but are not limited to, City Hall, City offices, parks, community facilities, and the City yard. Contractor is responsible for Collection of material City crews may Collect from other locations and deposit in City facility Solid Waste Containers, including but not limited to material from public litter Containers at parks and the Civic Center Entertainment area, and from Special Events. Collections shall be scheduled at a time mutually agreed upon by Contractor and City.

4.4.2 Special Events

Contractor shall provide Solid Waste Collection, Recycling and Disposal services at all City-sponsored events, including providing Bins, Roll-Off Boxes, litter/Recycling boxes, and liners to

City for Refuse and Recyclables Collection upon request at no additional charge. Events include, but are not limited to:

- Independence Day Pageant;
- Halloween Parade;
- Halloween Festival;
- SnowFest/Tree Lighting Ceremony; and,
- Easter Egg Hunt.

At no additional charge, Contractor shall Collect and Recycle boxes and bags used by Residents to deliver material to City-sponsored e-waste and shred events; City sponsors multiple events per year. Containers used shall be approved in advance by City, with three (3)-yard bins anticipated to be provided and emptied as necessary throughout the events.

Recycling boxes should be easily distinguishable from Refuse boxes, and labeled to facilitate proper use by event participants.

4.4.3 Abandoned Item Collection

Contractor will Collect and dispose of, at no additional charge, within one business day of notification from City, all items left in the City's right-of-way, such as sidewalks, alleys, streets, and parkways. Contractor will properly divert from landfilling or Dispose of such items in accordance with Sections 4.1.13 and 4.1.14.

4.4.4 Mr. Sun Neighborhood Clean-Up Program

Contractor will conduct twelve (12) Neighborhood Clean-up events per calendar year at no additional cost to City or Customers (the number of events are to be prorated for partial calendar years, and six (six) events may be requested in the initial contact period from August 1 to December 31, 2018). City will identify twelve (12) neighborhoods each year in which Contractor provide special Collection services each year, and the dates on which to conduct each of the twelve (12) events. City and Contractor will work together to select a location at which to set up a drop-off site. Contractor will provide and service Solid Waste Containers placed at each event, including separate Roll-Off Boxes for Refuse, dirt/concrete, scrap metal/appliance, Green Waste, and tires. Contractor will provide and service a sufficient number of Containers to Collect all material Collected; in particular, several Refuse Roll-Off Boxes are anticipated to be needed at each event. Events shall run for a minimum of four (4) hours on a Saturday.

Contractor is responsible for providing all necessary staffing. City may, but is not required to, provide supplemental staffing to assist residents during the event.

4.4.5 Sharps Collection Program

Contractor will provide Residential Customers (both Single- and Multi-Family) with pre-paid postage mail-back Sharps Containers at no additional charge.

4.4.6 Large Venue Event Assistance, Event Recycling

Contractor will assist planners of large venue events with reporting and planning needs as may be useful in meeting the requirements of AB 2176, and in lowering Disposal quantities generated at such events at no additional charge. Contractor shall take a proactive role in Solid Waste planning for large events. When informed by City as to an upcoming event, Contractor shall contact event planners to initiate Solid Waste Collection planning.

4.4.7 Emergency Collection and Disposal Service

Contractor will assist City at City's request with emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, riot or civil disturbance), or as otherwise determined necessary by City, by providing Collection equipment and drivers normally assigned to City. Contractor may charge City for actual Disposal processing and/or costs plus service rates per the approved rate schedule.

4.4.8 Code Enforcement Assurances

City may request Contractor assistance with code enforcement, including reporting of container and enclosure issues and potential health and safety code violations. See Section 2.2 for code enforcement assistance regarding illegal hauling.

4.5 Cart Selection, Distribution and Exchanges

4.5.1 Carts

4.5.1.1 Residential Container Distribution

All Carts shall be new at the start of service.

Contractor shall mail a return postage paid postcard and information describing the new rate structure and service enhancements to all Residential Cart Customers. Contractor must obtain City approval of post card and information to be sent prior to distribution.

Contractor shall deliver Customers a default selection of one (1) ninety-six (96)-gallon Refuse Cart, one (1) ninety-six (96)-gallon Recycling Cart, and one (1) ninety-six (96)-gallon Green Waste Cart.

After initial Cart distribution, Customers may request one (1) Cart exchange at no charge within the first six (6) months of receiving the Cart, and once per year thereafter. After one (1) exchange per year at no charge, Customers may request Cart exchanges in accordance with the approved rate schedule. One (1) Cart exchange includes all Cart changes requested at one (1) time, and multiple Carts and Cart types (Refuse, Recycling, Green Waste) may be exchanged.

4.5.1.2 Removal of Existing Containers

Contractor shall coordinate delivery of the new Refuse, Recycling and Green Waste Carts with the previous haulers' removal of existing Carts to minimize the period of time during which Residential Cart Customers are without Carts or have two (2) sets of Carts. If prior Collection contractors do not Collect their Carts at the start of service under this Agreement, Contractor shall Collect and store Carts until the City instructs Contractor to Recycle the Carts for maximum Diversion credit, or until the prior hauler arranges to Collect the Carts from Contractor.

During the term, if additional Carts belonging to the prior contractors are placed for servicing or Cart Collection during the Term, Contractor shall remove Carts from service and notify prior contractor(s) to make reasonable arrangements for pick up or Contractor shall be responsible for Recycling the Carts.

Neither City nor Customers shall be responsible for any of Contractor's costs associated with actions undertaken in accordance with this Section.

4.5.1.3 Cart Design Requirements

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval.

4.5.1.4 Capacity

Contractor shall provide Carts in ninety-six (96)-gallon sizes for Refuse, Recycling, and Green Waste Carts. Contractor shall provide Carts in sixty-four (64)- or thirty-two (32)-gallon sizes if the customer requests them based on space limitations at their property. However, a standard rate based on the ninety-six (96)-gallon cart will be applied. References to Cart sizes of thirty-two (32), sixty-four (64) and ninety-six (96) gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 30 to 35-gallons,
- 60 to 70-gallons, and
- 90 to 101-gallons.

4.5.1.5 Cart Handles

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

4.5.1.6 Cart Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;

- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

4.5.1.7 Cart Colors

The Refuse, Recycling and Green Waste Carts will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container type, including replacement Carts distributed throughout the Term. Refuse Carts will be black. Recycling Carts will be blue. Green Waste Carts will be green.

4.5.1.8 Cart Markings

Carts shall be hot stamped. All Cart markings must be approved by City prior to ordering Carts. Graphics indicating which materials may and may not be placed in each Cart and instructions on how to properly dispose of HHW shall be included on the Cart lid. Cart information shall be bilingual in English and Spanish. Carts shall include Contractor's name and phone number.

4.5.2 Cart Performance Requirements

All Carts shall be designed and manufactured to meet the minimum performance requirements described below. Carts shall carry a minimum ten (10)-year manufacturer's warranty.

4.5.2.1 Cart Load Capacity

Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-70	130
30-35	70

4.5.2.2 Cart Durability

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy their intended use and performance, for the term of this Agreement:

- Maintain their original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with the intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

4.5.2.3 Chemical Resistant

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

4.5.2.4 Stability and Maneuverability

Carts shall be stable and self-balancing in the upright position, when either empty or loaded to the maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position.

Carts shall be capable of maintaining the upright position in sustained or gusting winds of up to twenty-five (25) miles per hour as applied from any direction.

Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

4.5.2.5 Lid Performance

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to twenty-five (25) miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two (2) extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Cart.

4.5.2.6 Reparability

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by Contractor personnel. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein.

4.5.3 Cart Ownership and Maintenance Responsibilities

All Carts that are distributed by Contractor under this Agreement remain the property of the Contractor at the end of the Agreement term. The Contractor shall be responsible for Cart repair and maintenance, and replacing lost, stolen or damaged Carts within two (2) business days at no additional charge to the Customer or to the City. Graffiti shall be removed or the Cart replaced within twenty-four (24) hours of request by City or Customers.

4.5.4 Bins

Contractor shall provide Customers with Bins for Collection of Solid Waste. Customers may obtain Bin compactors and Roll-off compactors from either Contractor or a third party; the leasing of such equipment is outside the scope of this Agreement. Contractor shall maintain its Bins in a clean, sound condition free from putrescible residue. Bins shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances, which were designed for movement, loading, or unloading of the Bin, shall be maintained in good repair. If a Bin is damaged, it shall be repaired or replaced within two (2) business days of notification by Customer or City.

Contractor shall inspect Bins at least once per calendar year beginning 2019. If necessary based on inspection, or requested by the Customer, Contractor will clean or replace all Bins once per calendar year, beginning 2019, at no charge. Contractor shall perform cleaning or replacement of Bins more frequently if necessary, in accordance with the approved rate schedule, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings in accordance with the approved rate schedule. Contractor shall remove graffiti at no additional charge from any Bin within twenty-four (24) hours of request by City or Customers. All Bins provided by Contractor shall remain the property of Contractor.

Each Bin placed in the City by the Contractor shall have the name and phone number of the Contractor in letters not less than three (3) inches high on the exterior of the Bin so as to be visible when the Bin is placed for use. Contractor shall repaint Bins upon City request.

Contractor shall coordinate with the previous haulers to ensure Customers have a minimal period without Solid Waste Containers, and do not have to store two (2) sets of Bins.

4.5.5 Roll-off Boxes

Contractor shall provide clean Roll-off Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of Contractor in letters not less than three (3) inches high on the exterior of the Roll-off Box so as to be visible when the Container is placed for use. Contractor shall properly cover all open Roll-off Boxes during transport as required by the State Vehicle Code. If a Roll-Off Box is damaged, it shall be repaired or replaced within two (2) business days of notification by Customer or City. Graffiti shall be removed within twenty-four (24) hours of request by City or Customers. All Roll-Off Boxes provided by Contractor shall remain the property of Contractor.

4.6 Operations

4.6.1 Schedules

4.6.1.1 Collection Days and Hours

To preserve peace and quiet, Solid Waste shall only be Collected between 7:00 a.m. and 6:00 p.m. Residential collection is only permitted Monday through Friday; Commercial collection must be provided Monday through Saturday. Commercial collection will be provided on Sunday to Customers requesting such service, subject to advance written approval of City (approval may be by e-mail or other written means, and may come from the City Manager or designee). Contractor may not make exceptions to these Collection days and times without advanced written approval from the City.

If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day, Collection days for the remainder of that week shall all be postponed one Collection day, with Saturday Residential collection service permitted if necessary to accommodate postponed Friday Collections, and Sunday Commercial collection service permitted if necessary to accommodate postponed Saturday Collections. On such postponed Collection days, where Residential Collection may fall on the scheduled street sweeping day, Carts will typically be placed on the curb instead of in the street to accommodate street sweeping; Contractor must place the Carts post-Collection back on the curb and out of the street, regardless of where the customer placed the Carts.

4.6.1.2 Review of Schedules and Routing

Contractor shall review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with City upon thirty (30) days written notice requesting said review. Contractor shall submit a copy of its Commercial and Residential Collection schedule and route map within seven (7) days if requested by City. If the plan is determined to be inadequate by City, Contractor shall revise it, incorporating any changes necessary to make it satisfactory to City within thirty (30) days.

No change in schedules and routing shall be implemented for fifteen (15) days after Contractor receives approval from City and notifies Customers. No significant route changes may be made by Contractor without prior approval by City. Contractor is responsible for costs associated with parking restriction signage changes that result from a change in Contractor's routing (for

example, the City may choose to alter street sweeping schedules to follow refuse collection service).

4.6.1.3 Missed Pickups

If a missed pickup of Refuse, Recycling and/or Green Waste is reported to the Contractor by 12:00 noon, the Contractor shall collect it on the same day. If a missed pickup is reported after 12:00 noon, the Contractor shall make up the collection the next business day.

4.6.2 Vehicles

A. **General.** The Contractor shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms as described in this Agreement. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall added at the Contractor's sole expense. The Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

B. **Specifications.** All Bin and Cart route Collection vehicles shall be new and use compressed natural gas ("CNG") or liquefied natural gas ("LNG") at the start of service. Contractor shall be in compliance with all rules and regulations currently in force or passed during the Agreement Term, including SCAQMD and the Air Resource Board's regulations, in regards to all vehicles used in the City. No rate adjustments shall be made for such changes in law. All vehicles used by the Contractor in providing Solid Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow. If a vehicle is replaced during the term, the replacement vehicle must be newer or same model year as the replaced vehicle.

Roll-off Box vehicles, Container delivery vehicles, scout vehicles, supervisor pickup trucks, and vehicles used for holiday tree Collection, special events and Bulky Item Collection are only required to use LNG or CNG fuel to the extent required by law, including SCAQMD and Air Resources Board regulations, with no rate adjustments granted for such changes in law.

C. **Vehicle Identification.** The Contractor's name, local telephone number, and a unique vehicle identification number designed by the Contractor for each vehicle shall be prominently displayed on all four (4) sides of all vehicles, in letters and numbers no less than five (5) inches high. The Contractor shall not place the City's name and/or any City logos on the Contractor's

vehicles. Vehicles shall all be painted in a standard color scheme. City must approve truck labeling.

D. **Collection Vehicle Billboards.** City reserves the right to request that Contractor install frames on its Collection vehicles for placement of City billboards at no additional charge. City would be responsible for the cost of developing the billboards and providing the billboards to Contractor for mounting. City has the exclusive right to promote City events and provide public information through the use of billboards on Collection vehicles.

E. **Cleaning and Maintenance.**

- 1) Contractor shall maintain all of its properties, vehicles, Facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times, and compliant with all federal, State and local laws.
- 2) Vehicles used in the Collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam-cleaned on a regular basis so as to present a clean appearance. City may inspect vehicles at any commercially reasonable time to determine compliance with this Agreement. Contractor shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. Contractor agrees to replace or repair to City's satisfaction, any vehicle that City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) Contractor shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from City, if City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three (3) years.
- 4) Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles that are leaking or in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. Contractor shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to City upon request.

- 5) Contactor 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 maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- 6) Upon request by City, Contractor shall furnish City a written inventory of all equipment, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

F. Operation.

- 1) Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.
- 2) Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205, and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed seventy-five (75) dB when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground. Contractor shall submit to City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. Contractor shall store all equipment in safe and secure locations in accordance with applicable zoning regulations.
- 3) Contractor shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: City's driving surfaces (excluding normal wear and tear), whether or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.

G. City Inspection Per Code. City may cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such

manner as may be appropriate to determine that the vehicle is being maintained in compliance with the applicable provisions of the State Vehicle Code, including all Vehicle Code sections regarding smog equipment requirements. City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by City shall be returned to service until it conforms with applicable codes, and its return to service has been approved by City.

H. **Brake Inspections.** The brake system of each vehicle used in performance of this Agreement shall be inspected and certified according to State law by the California Highway Patrol or by a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be made available to City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for terminating this Agreement.

I. **Correction of Defects.** Following any inspection, the City Manager shall have the right to cause Contractor, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly. The City Manager's determination may be appealed to the City Council, which decision shall be final.

4.6.3 Litter Abatement

A. **Minimization of Spills.** Contractor shall use due care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the Collection or transportation process. If any Solid Waste or fluids leak or spill during Collection, Contractor shall promptly clean up all such materials. Each Collection vehicle shall carry a broom, shovel, absorbent, and containment materials at all times for this purpose.

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste transfer between vehicles, without prior written approval by City.

B. **Clean Up.** During the Collection or transportation process, Contractor shall clean up all litter spilled during Collection or otherwise caused by Contractor. Contractor shall leave a "red tag" notice for Customer if litter not caused by Contractor is found in Container enclosure or around Containers. For litter due to overflowing Bins, Contractor may address habitual offenders in accordance with Section 4.1.8.

In the event of a spill of materials (vehicle fluids, leachate, etc.), Contractor shall provide a cleanup of the spill to the satisfaction of City and other governing agencies. Cleanup methods may include pressure washing (Contractor must capture and reclaim water) or other similar clean-up methods.

C. **Covering of Loads.** Contractor shall properly cover all open debris boxes during transport.

4.6.4 Personnel

A. **Qualified Drivers.** Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

B. **Hazardous Waste Employee Training.** Contractor shall establish and vigorously enforce an educational program which will train Contractor's employees in the identification of Hazardous Waste. Contractor's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly direct such Hazardous Wastes to any Facility not specifically licensed to accept and handle Hazardous Waste and alerted to its presence.

C. **Customer Courtesy.** Contractor shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If City has notified Contractor of a complaint related to discourteous or improper behavior, Contractor will consider reassigning the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process.

D. **Compliance with Local Laws.** Contractor and its employees shall comply with all local laws when conducting business in the City. No smoking is allowed within vehicles, and all smoking materials that are allowed shall be properly disposed of; no smoking materials or other trash shall be discarded in any location except approved trash or recycling containers.

Employees and subcontractors shall comply with all other laws or regulations pertaining to franchisees or the public generally.

E. **Unauthorized Material Removal.** Contractor shall dismiss or discipline employees who remove documents or any other material from Containers, other than specifically for the purposes of Disposal and Diversion as described in this Agreement.

F. **Training.** Contractor shall provide suitable operations, health and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

4.6.5 Identification Required

Contractor shall provide its employees, companies and subcontractors who may make personal contact with residents or businesses in the City with identification. Contractor shall provide a list of current employees, companies, and subcontractors to City upon request.

City reserves the right to perform a security and identification check through City's Police Department on Contractor and all their present and future employees employed by Contractor to work in the City, in accordance with accepted procedures established by City, or for probable cause.

4.6.6 Fees and Gratuities

Contractor shall not, nor shall it permit any agent, employee, or subcontractors employed by it to request, solicit or demand, either directly or indirectly, any compensation or gratuity for services authorized to be performed under this Agreement except as described in this Agreement, in accordance with Exhibit 1 as updated and approved by City throughout the Term of the Agreement.

4.6.7 Non-Discrimination

Contractor shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or Solid Waste law.

4.6.8 Routing and Coordination With Street Sweeping Services

Contractor shall provide all routes and route schedules to City and work with City to resolve conflicts with street sweeping schedules.

4.6.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

Contractor shall direct its drivers to note (a) the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and (b) the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to City within one (1) working day of such observation.

4.7 Facility Approval

Contractor must receive written advance approval from City to use each landfill, Transfer Station, Transformation Facility, Green Waste Facility, composting Facility, processing Facility or any other Facility used by Contractor in the fulfillment of this Agreement. Contractor is responsible for ensuring that each Facility it uses is properly permitted prior to requesting City approval to use such Facility. Unless and until City instructs otherwise, the designated Facilities as of the start of service under this Agreement are:

Transfer Facility: Athens Services
 14048 Valley Boulevard
 Industry, California 91746

Processing Facilities:

Materials Recovery Facility

Athens City of Industry Materials Recovery Facility
14048 Valley Boulevard
Industry, California 91746

Construction and Demolition (C&D Facility)

California Waste Systems
621 West 152nd Street
Gardena, California 90247

Organics Composting Facility

American Organics
20055 Shay Road
Victorville, California 92394

Waste-To-Energy Facilities:

- (1) Commerce Refuse-To-Energy Facility
5926 Sheila Street
Commerce, California 90040
- (2) Southeast Resource Recovery Facility (SERRF)
118 Pier South Avenue
Long Beach, California 90802

Operating Facility

Yard: 15045 Salt Lake Avenue
Industry, California 91746

Office: 5355 Vincent Avenue
Irwindale, California 91706

Disposal Facilities

- (1) Savage Canyon Landfill
13919 Penn Street
Whittier, California 90602
- (2) Mid-Valley Landfill
2390 Alder Avenue
Rialto, California 92376
- (3) Puente Hills landfill – Alternative Daily Cover
13130 Crossroads Parkway South
Industry, California 91746

Contractor shall transport all Solid Waste Collected to an approved Facility. City reserves the right to designate the Solid Waste Facilities, including landfills, to be used by Contractor. If City

directs Contractor to a Facility other than a Solid Waste Facility chosen by Contractor (or directs Contractor to change the amount of Solid Waste being delivered to a Facility), and in doing so it adversely affects the ability of Contractor to meet either or both of the requirements of Section 4.2.5 and/or Section 9.4, then in this event City and Contractor shall meet and confer and mutually agree on revised obligations for Sections 4.2.5 and 9.4. In addition, if any such exercise by City serves to change Contractor's cost of Disposal, processing and transportation of Solid Waste, rates may be equitably adjusted.

Contractor shall maintain accurate records of the quantities of Solid Waste transported to all Facilities utilized and will cooperate with City in any audits or investigations of such quantities.

4.8 Status of Landfills

Any landfill utilized by Contractor shall be designed and constructed in accordance with 23 California Code of Regulations Section 2510 et seq. ("Subchapter 15"). Any such landfill has been issued all permits from federal, state, regional, county and City agencies necessary for it to operate as a Class III Sanitary Landfill and is in full regulatory compliance with all such permits.

4.9 Dedicated Routes

Solid Waste Collected in the City may not be commingled in Collection vehicles with Solid Waste from other jurisdictions, unless City approves in advance in writing the specific commingled routes and the tonnage allocation method to be used.

4.10 Service Exceptions; Hazardous Waste Notifications

A. **Failure to Collect.** When Solid Waste is not Collected from any Solid Waste service recipient, Contractor shall notify the service recipient in writing, at the time Collection is not made, through the use of a "red tag" or otherwise, of the reasons why the Collection was not made.

B. **Hazardous Waste Inspection and Reporting.** Contractor reserves the right to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Hazardous Waste, and the right not to Collect Hazardous Waste put out with Solid Waste. Contractor shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found or observed in

Solid Waste anywhere within City. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Contractor will immediately notify City Manager. Contractor shall implement and maintain a training program that will assist its employees in identifying and properly disposing of any Hazardous Waste that may come into their possession.

C. **Hazardous Waste Diversion Records.** Contractor shall maintain records showing the types and quantities, if any, of Hazardous Waste found in Solid Waste and which was inadvertently Collected from service recipients within City, but diverted from landfilling.

4.11 Residential Cart Placement and Coordination with Street Sweeping

Residential cart customers are generally instructed to place carts in the street adjacent to the curb. However, during holiday weeks, the collection day may conflict with the posted street sweeping hours; in such cases, customers will be instructed to place carts on the parkway (greenbelt). Contractor shall return the cart after collection to the location where the customers were instructed to place the cart (parkway), so as not to impede traffic or street sweeping operations, regardless of whether the container was properly set out by Customer.

ARTICLE 5
OTHER SERVICES

5.1 Customer Service

5.1.1 Local Office

Contractor shall maintain a local office within the City, staffed and open for Customers, at a minimum, from 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding holidays. Contractor shall staff a toll-free telephone line with a live representative to assist customers at a minimum during the local office's operating hours, as well as, Saturdays from 8:00 a. to 5:00 p.m., excluding holidays.

Contractor shall staff a toll-free telephone line to assist Customers, and shall provide a representative, an answering service or answering machine during all other hours. Calls received by answering service or machine shall be responded to on the next business day. Contractor shall provide City with a twenty-four (24) hour emergency number to a live person, not voice-mail.

Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days and Customers must be reasonably able to reach Contractor by telephone during these hours. Contractor shall record Customer complaints regarding Customer service personnel in accordance with Section 5.1.2. Customer service representatives receiving multiple complaints are to be transferred from Customer service duties or, with City approval, disciplined and appropriately trained.

5.1.2 Complaint Documentation

Service complaints received by City shall be directed to Contractor. Contractor shall keep daily logs of complaints forwarded to it for a minimum of three (3) years.

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 caller/complainant, 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. Log shall also include each instance that Solid Waste and/or Recyclables are not Collected, the form of notification used to inform the participants of the reasons for non-Collection, and the end result or means of resolution of the incident.

All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt, except missed pickups, which shall be addressed within the time frame described in 4.6.1.3. Contractor shall use best efforts to resolve complaints within two (2) business days. Contractor shall log action taken by Contractor to respond to and remedy the complaint.

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.

5.1.3 Resolution of Customer Complaints

Disputes between Contractor and 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.

Intervention by 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.

5.1.4 Contract Liaison

Contractor shall designate in writing a "Contract Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Agreement-related issues. City shall have the right to approve Contractor's choice for a liaison. City shall be notified in advance of any change in Contract Liaison.

5.1.5 Service Liaison/Route Supervisor

Contractor shall designate in writing a field supervisor as "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer service related complaints. City shall have the right to approve the Contractor's choice for a liaison. City shall be notified in advance of any change in Service Liaison.

5.2 Education and Public Awareness

5.2.1 General

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve program and diversion requirements of AB 939. Accordingly, Contractor agrees to take direction from City 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. Contractor shall maintain its own program of providing information relevant to needs and methods to reduce, reuse and Recycle Solid Waste with its Bills.

5.2.2 Implementation and 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 Contractor expense, subject to City approval and input, which will be distributed as indicated below. All of these materials and programs shall be produced and/or available in English and Spanish languages, including pictures wherever applicable. All brochures, mailings, instructional “how-to” packets, and other educational materials are to be approved by City in advance of distribution. A public education plan shall be submitted to City for review within sixty (60) days of the execution of this Agreement. This plan shall address the items described in this Section.

- **Initial Mailing** – At least forty-five (45) days prior to the start of Collection service under this Agreement, Contractor will prepare and mail an initial mailing to all Customers explaining the transition from the existing Solid Waste Handling Service program to the new program as defined by this Agreement. The mailing will describe program changes, route changes if any, dates of program implementation, Recycling and Diversion programs available, and other pertinent information.
- **Instructional “How-to” Packets** – An information packet shall be provided to each Customer at the start of service under this Agreement and to each new Customer throughout the Agreement term. This packet shall: describe available services, including available Recycling and Diversion programs and their benefits; provide instructions for proper use of the Carts and Bins provided (such as how to place Carts or other permitted items for Collection, the types of materials to be placed in each Cart); detail holiday Collection schedules; and provide Billing and Customer service telephone numbers. This packet will contain updated information on how to use Containers, when, where and how

to place Solid Waste for Collection, and who to contact with service or Billing questions, and for Bulky Item pickups.

The packet should also clearly indicate what materials, such as syringes and other HHW, should not be disposed of in these Containers. This brochure shall include instructions on how Customers should dispose of HHW and Sharps, such as information on the HHW drop-off facilities, Sharps program, and other available programs.

- **“One Person’s Trash” Quarterly Publication** – Contractor shall fund the “One Person’s Trash” quarterly publication, including development, printing and mailing the publication to all customers four (4) times per year. City has final approval of material to be included in the publication.

Contractor is responsible for distributing Solid Waste Collection information to Customers, including information regarding City and Contractor programs, program changes, Collection schedules, holiday schedules, holiday tree Collection, Bulky Item Collections, proper HHW handling and disposal options, the environmental, regulatory, and other benefits of participating in Recycling and waste minimization and reuse in general, Contractor’s Customers service numbers. Contractor may use this “One Person’s Trash” publication to communicate this information to Customers.

Contractor shall provide articles and information regarding Mandatory Commercial Recycling requirements and options for periodic inclusion in the publication.

- **Article and Press Release Assistance** – Contractor shall assist City in preparing articles and press releases related to Solid Waste services and environmental issues upon City request.
- **Corrective Action “Red-Tag” Notice** – Contractor shall develop a corrective action notification form, or “Red-Tag” notice, for use in instances where a Customer sets out inappropriate materials for Collection, that explains the appropriate manner for Disposal of such items.
- **Website** – Contractor shall develop and maintain a website to enable Customers to contact Contractor, and to display holiday schedules, Sharps program information, proper HHW disposal procedures, which materials are to be placed in Recycling Containers, and other useful information.

5.2.3 City-Provided Billing Inserts

City may request the Contractor to mail billing inserts to Customers. Contractor will instruct City as to how far in advance of mailing the inserts must be delivered to Contractor. City shall develop the insert material. Contractor shall be responsible for all costs and efforts associated with inserting the material into the billings and in mailing them to Customers.

5.2.4 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, homeowners' associations, Multi-Family complexes and businesses, to promote and explain the Recycling programs Contractor offers, and participate in demonstrations and civic events.

5.2.5 Community Events

At the direction of City, Contractor shall participate in and promote Recycling and other Diversion techniques at community events including Earth Day, and other local activities. Such participation would normally include providing, without cost, Collection and educational and publicity information promoting the goals of City's Solid Waste program.

5.3 Waste Generation/Characterization Studies

Contractor agrees to participate and cooperate with City and its agents and 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, by Customer type (Single-Family, Multi-Family, Commercial), to satisfy the requirements of AB 939 and the City's sustainability and environmental objectives. Contractor will at its sole expense conduct such a waste generation and characterization study upon request of City, but not more than once every two (2) years.

5.4 Additional Enhancements Proposed by Contractor

Contractor included the following proposed service enhancements in its proposal to City, and City has agreed to accept these enhancements and thereby are included in this Agreement.

5.4.1 Extra Compost

Upon request by City, Contractor shall deliver to City free compost (up to one hundred (100)-cubic yards annually) for use in City's parks, parkways, and other areas for beautification.

5.4.2 Ten Percent (10%) Discount to Active Military, Sheriff and Firefighter Personnel

Contractor has agreed to offer a ten percent (10%) discount of monthly fees and billing to active military, Norwalk Sherriff Station personnel and County of LA Firefighters residing and assigned to the City.

5.4.3 Sales Tax Revenue

Contractor shall make every effort to generate additional sales tax revenue for City. Contractor shall establish a point of sale in the City for the purchase of new containers, vehicles and other items that are subject to sales tax.

Contractor will complete and submit any reports or forms necessary to ensure that City receives credit for its purchases. Contractor efforts will be undertaken in accordance with applicable law, and City will not be required to undertake any actions. Contractor will assume liability related to sales tax payment and distribution.

5.4.4 Scholarship Fund

Contractor shall provide an annual Community Scholarship program of \$5,000.00 to be awarded to ten (10) students (\$500.00 each) that reside in the City.

ARTICLE 6

CONTRACTOR COMPENSATION AND RATES

6.1 General

The maximum rates set forth in Exhibit 1, and as more fully defined as Contractor Compensation in this Article, shall be the maximum amount that Contractor may charge Customers, as full, entire and complete compensation due pursuant to this Agreement for all labor, equipment, materials and supplies, City fees, taxes, insurance, bonds, letters of credit, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. Contractor shall impose no other charges for services provided to Customers unless approved by the City Manager.

6.2 Initial Rates

The maximum rates that Contractor may charge Customers through August 31, 2020 shall not exceed the maximum rates set forth in Exhibit 1.

6.3 Schedule of Future Adjustments

6.3.1 Request Submittal

Beginning with the Rate Year starting September 1, 2020 and ending on August 31, 2021, and for all subsequent Rate Years, Contractor may request an annual adjustment to the maximum rates shown in Exhibit 1. Contractor shall be responsible for proof of timely submittal, and shall submit its request in writing, to be received by City in person, via certified mail, or by electronic mail by the preceding April 1, and shall be based on the method of adjustment described in Section 6.4. A copy of an electronic mail submittal shall only be considered proof of receipt if City replies to Contractor's e-mail affirmatively that it was received. Failure to submit a written request by April 1 shall result in Contractor waiving the right to request such an increase for the subsequent Rate Year.

6.3.2 Approval Process

If a rate adjustment requested per this Section 6.3 is determined by the City to be accurately calculated in accordance with Agreement procedures, and would otherwise have been approved by the City Council, but is prevented from implementation due to a protest under Proposition 218, then Contractor is permitted to terminate this Agreement upon twenty-four

(24)-month written notice to City, but shall not be entitled to compensation from City or Customers for revenue not received due to the Proposition 218 protest.

6.4 Method of Adjustments

6.4.1 General

Pursuant to Section 6.3, Contractor may request an adjustment to the maximum rates according to the method described below, subject to review and approval of City. All future adjustments approved under Sections 6.3 and 6.4 are to be effective September 1.

City may, but is not required to, implement the annual rate adjustment if Contractor does not request it. If an annual adjustment that would have resulted in a rate decrease is not implemented for any reason, the next rate adjustment will be measured based on the change in indices from the last implemented rate adjustment; the intent is to ensure subsequent rate increases shall be offset with any decrease not previously implemented.

6.4.2 Cost Components for Rate Adjustment Indices

The approved Contractor Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section 6.4.3 for detailed Contractor Compensation adjustment procedures.

Cost Category	Initial Weightings	Rate Adjustment Factor (1)
Fuel	6%	Natural Gas (CNG) Information Reported by Clean Cities, West Coast (Table 5 of quarterly report). The average index for the calendar year shall be for the data printed in the reports dated in January, April, July and October of each calendar year.
All Other	94%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index – U.S. city average, not seasonally adjusted
Total	100%	

(1) If an index is discontinued, an alternative index must be approved by the City Manager.

6.4.3 Rate Adjustment Steps

All rates (including Cart, Bin, Roll-Off Box and all other ancillary rates) will be adjusted using the cost component weightings identified above, per the formula described below. See Exhibit 3A.

Step One – Calculate the percentage increase or decrease in each index listed in Section 6.4.2. The increase or decrease in the published indices for fuel and all other (CPI) will be the change in the average annual published index between the twelve (12)-months ended the December prior to the Rate Year anniversary date and prior twelve (12)-month average. (See Exhibit 3B.)

Step Two – The first rate adjustment cost components as a percentage of total costs are provided in Section 6.4.2 above, with subsequent components calculated in Step Four of the rate adjustment. For Step Two of each subsequent rate adjustment, use the cost components recalculated in Step Four during the previous rate adjustment.

Multiply the percentage changes for each rate adjustment component by that component's weighting and add these resulting percentages together to get the total weighted change to the rates.

Step Three – Multiply the total weighted percent change from Step Two by the existing Customer rates to calculate the increase or decrease to the maximum rates. Add the rate increase or decrease to the existing rates to derive the newly adjusted rates.

Step Four – Recalculate weightings for the following year based upon these changes.

6.5 Extraordinary Adjustments

Contractor may request an adjustment to maximum rates in the event of extraordinary changes in the cost of providing service under this Agreement. Extraordinary rate adjustments may be requested no more than once per year. Reasons for such extraordinary rate adjustment requests shall not include changes in Recyclable Material or Green Waste tipping fees or processing costs, changes in the market value of Recyclables from the values assumed in Contractor's Proposal, discontinuance of Diversion credit for any form of Transformation or closure of any such facility (see Section 4.2.5), changes to costs or programs related to Organics Recycling programs as described in Section 4.1.15, inaccurate estimates by Contractor of its proposed cost of operations, unionization of Contractor's work force, or change in wage rates or employee benefits.

Contractor may request an extraordinary adjustment based upon changes after, and unanticipated as of, the Effective Date in a direct per ton fee assessed by federal, state or local regulatory agencies at the landfill(s) approved and used for waste disposal under this Agreement. Extraordinary rate adjustments shall only be effective after approval by the City Council and may not be applied retroactively.

For each request for an adjustment to the maximum rates that Contractor may charge Customers 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 assumptions made by Contractor in preparing the estimate. Contractor shall also submit a schedule showing how its total costs and total revenues have changed over the past three (3) years for the services provided under this Agreement.

City may request a copy of Contractor's annual financial statements, both covering the services provided in City and the company as a whole, in connection with City's review of Contractor's rate adjustment request. City shall review Contractor's request and, in City'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. City may consider increases or decreases in Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request. City may require Contractor to fund a review of any extraordinary rate adjustment, by a third party of the City's choosing, up to \$35,000 per request.

6.6 Customer Billing and Contractor Compensation

6.6.1 Residential Cart Customers

Contractor shall Bill Residential Cart Customers quarterly, no sooner than the first day of the quarter for which services are being Billed. Payment will not be considered delinquent and will not be subject to late fees if received before the end of the quarter for which service is billed, or thirty (30) days after Billing, whichever is later. Contractor may not discontinue service for Residential Customers. Contractor may request that City place delinquent accounts on the County property tax bill. Contractor will receive any amount recovered less ten percent (10%). Contractor assumes the risk of non-payment.

6.6.2 Bin, Commercial Cart, and Roll-Off Box Customers

Contactors shall Bill permanent Bin and Roll-Off Box Customers monthly, no sooner than the first day of the month for which service is being Billed, with payment due no sooner than thirty (30) days after the invoice date. Contractor assumes the risk of non-payment.

6.6.3 Temporary Services Billing

Contractor shall Bill for temporary Roll-off Box and Bin services. For established Commercial accounts, Contractor shall Bill monthly, no sooner than the first day of service, and require payment no sooner than thirty (30) days from the start of the service period Billed for.

For Customers without an established, on-going service accounts, Contractor will accept major credit cards for payment. Such Customers who do not use credit cards may be required by the Contractor to post a security deposit or to pay on a "Cash on Delivery" (C.O.D.) basis. Any unused portion of a security deposit will be refunded to the Customer within five (5) business days of the termination of service.

6.6.4 Contractor's Invoices

All Bills must include service description, including Container size, frequency of service, any special services (such as locking lid service), and period billed for. City must approve Contractor Billings as to content and format of invoice. All Bills must carry a due date, not "due upon receipt." Bills will not separately itemize City fees, surcharges, disposal components or other breakdown of rates without advance written approval from City. Bills shall include Contractor's telephone number for Billing and service inquiries.

6.6.5 Billing Disputes

If any Customer disputes a Billing statement provided by Contractor, Contractor shall provide notice thereof to the City Manager, with a copy of the Billing invoice and the nature of the dispute (including copies of any correspondence from the Customer). Contractor shall use its best efforts to resolve such disputes within seven (7) days of receipt of notice from the Customer of such dispute. If such dispute cannot be mutually resolved by Contractor and the Customer within such seven (7)-day period, the dispute will be submitted to City Manager for binding dispute resolution. Contractor acknowledges that the determination of the City Manager relating to such dispute shall be final and un-appealable.

6.6.6 Delinquent Accounts

Late fees may not be assessed sooner than thirty (30) days after the end of the period Billed for, or thirty (30) days after the invoice date, whichever is later.

6.6.7 Customer Billing Adjustments

Should Contractor determine that Contractor has under-billed a Customer, or Customers, Contractor may back-Bill for no more than six (6) months.

If Contractor Bills Customers for any service charges not on the City-approved rate schedule, or not otherwise approved in writing by City, such charges shall be refunded to Customers at City or Customer's request or as soon as discovered by Contractor; Contractor shall refund up to three (3) years of past unapproved Billings.

6.6.8 Exemption from Service

Residents may request a temporary exemption from service due to non-occupancy or self-hauling.

Residential and/or Commercial Customers may qualify for a non-occupancy exemption in accordance with Section 8.48.270 of the Norwalk Municipal Code, as currently drafted or as may be amended during the Agreement Term. In addition to exemptions permitted by the Norwalk Municipal Code, the City may also grant temporary vacation holds, for which Customers may request a suspension of service and Billing.

Residential and/or Commercial self-haulers may be exempt from receiving Solid Waste services from Contractor if the City issues the Customer a self-haul permit. Current procedures are included in Norwalk Municipal Code Section 8.48.260 and may be amended during the Agreement Term.

City may require Contractor to be responsible for administering exemption procedures.

ARTICLE 7

REVIEW OF SERVICES AND PERFORMANCE

7.1 Performance Review Meeting

City may hold a meeting or a public hearing annually to review Contractor's Solid Waste Collection efforts, source reduction, processing and other Diversion services and overall performance under this Agreement (the "Solid Waste Services and Performance Review Meeting"). The purpose of the Solid Waste Services and Performance Review Meeting 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 Collection, source reduction and Recycling and Disposal system; and to ensure 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 Services and Performance Review Meeting shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding program and diversion goals, regulatory constraints, results of route audits, and Contractor performance. City and Contractor may each select additional topics for discussion at any Solid Waste Services and Performance Review Meeting.

City shall notify Contractor of its intent to hold a Solid Waste Services and Performance Review Meeting at least sixty (60) days in advance thereof. Thirty (30) days after receiving notice from City of a Solid Waste Services and Performance Review Meeting, Contractor shall submit a report to City which may contain such information as it wished to have considered, and shall contain the following:

- a) Current Diversion rates and a report on Contractor's outreach activities for the past year.
- b) Recommended changes and/or new services to improve City's ability to meet waste diversion goals and to contain costs and minimize impacts on rates. A specific plan for compliance with State diversion goals shall be included.
- c) Any specific plans for provision of new or changed services by Contractor.

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 Services and Performance Review Meeting. 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 Services and Performance Review Meeting, and any Customer may submit comments or complaints during or before the Meeting, either orally or in writing. Contractor shall be present at and participate in the Solid Waste Services and Performance Review Meeting.

As a result of its findings following any Solid Waste Services and Performance Review Meeting, City may require Contractor to provide expanded or new services within a reasonable time and City may direct or take corrective actions for any performance inadequacies (although nothing contained in this provision should be construed as requiring City to hold a Solid Waste Services and Performance Review Meeting in order to enforce any rights or remedies it has pursuant to the terms hereof.) Should City require expanded or new services as a remedy for Contractor's failure to perform its obligations hereunder, no additional compensation shall be due for such services. Otherwise, any new or expanded services required of Contractor shall be subject to the provisions of Section 2.10.

7.2 Performance Satisfaction Survey

If requested by City, Contractor will create and conduct a survey at Contractor's expense in preparation for any Solid Waste Services and Performance Review Meeting held pursuant to Section 7.1, or for other City uses. City shall notify Contractor of its desire for such a survey at least ninety (90) days in advance of the Solid Waste Services and Performance Review Meeting, or other City deadline for results. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Contractor and/or for the consideration of changes in/additions to Solid Waste service offered. The Survey will be distributed to a minimum of ten percent (10%) of the Residential Customers and ten percent (10%) of the Commercial Customers, selected at random. City may instruct Contractor to send out separate Single-Family and Multi-Family/Commercial surveys. City will have final approval over content and format; City may edit Contractor's draft or draft the survey itself. Contractor must receive written approval of the surveys' content and format, and the distribution list, from the City prior to mailing. City may require that Contractor have Customer responses to the survey returned directly to City. If the survey is conducted for the Solid Waste Services and Performance Review Meeting, the survey results shall be made available to the City thirty (30) days prior. City may require Contractor-funded surveys up to once every two (2) years.

7.3 Route Audit

Once during the first year, and thereafter within ninety (90) days of City request (but not more frequently than once every three (3) years), Contractor shall conduct an audit of its Residential and Commercial Collection routes in the City. City may use information from the audit to develop a request for proposals for a new service provider. City may instruct Contractor when to conduct the audit in order for the results to be available for use in preparation of a request for proposals or for other City uses. City may also instruct Contractor to conduct an audit at a time that would produce the most accurate Customer service information for a new service provider to use in establishing service with Customers. In setting these audit dates, City will establish due dates for Contractor providing routing and account information, and later, the report, to City.

The route audit, at minimum, shall consist of an independent physical observation by person(s) other than the route driver of each Customer in the City. This person(s) is to be approved in advance by City. The route audit information shall include, as a minimum, the following information for each account:

For Residential Cart Customers (Residential Route Audit):

- Route number;
- Truck number;
- Number and size of Carts by waste stream (Refuse, Recycling, Green Waste);
- Service address; and,
- Cart condition.

For Residential Bin, Commercial Bin and Cart, and Permanent Roll-off Customers (Commercial Route Audit):

- Route number;
- Truck number;
- Account name;
- Account number;
- Account service address;
- Account type (Residential, Commercial, Roll-off);

- Service level per Contractor Billing system (quantity, size, frequency);
- Observed Containers (quantity and size);
- Container condition;
- Proper signage; and,
- Graffiti.

Within thirty (30) days after the completion of the route audit, Contractor shall submit to City a report summarizing the results of the audit. This summary shall include:

- Identification of the routes;
- Route map;
- Truck numbers;
- Number of accounts, by route and in total (Residential, Commercial and Roll-off Box);
- Confirmation that all routes are dedicated exclusively to City Customers, or that the tonnage allocation methodology has been approved by the City;
- Number and type of exceptions observed;
- Total monthly service charge (Residential, Commercial and Roll-off Box), pre-audit; and,
- Total monthly service charge (Residential, Commercial and Roll-off Box), post-audit (subsequent to corrections of identified exceptions).

The report shall include a description of the procedures followed to complete the route audit. This description shall include the names and titles of those supervising the route audits and the names and titles of those performing the observations.

The report shall also include a description of the changes and Contractor's plans to resolve the exceptions. The results of the audit, and supporting back-up data, shall be available for review by City or its representative and shall be made available in an electronic or printed format.

ARTICLE 8

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

8.1 General

Contractor shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulations, to meet the reporting and Solid Waste program management needs of City, and to evaluate progress on meeting City's sustainability and environmental objectives. To this extent, such requirements set out in this and other articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of City, the records and reports to be maintained and provided by Contractor in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

8.2 Records

8.2.1 General

Contractor shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up to the satisfaction of City. All records shall be maintained for five (5) years, and shall continue to be available for five (5) years after the expiration of this Agreement, except as otherwise provided in this Agreement. After minimum holding periods are met, Contractor will notify City ninety (90) days before destroying records to provide City with option of receiving the records instead.

Contractor agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to City and its official representatives during normal business hours. Account histories shall be accessible to City by computer for a minimum of five (5) years. City may review or utilize any of the records described in this

Section. Such records include, but are not limited to, financial, Solid Waste, CERCLA and Disposal records.

8.2.2 Financial Records

Contractor shall maintain financial records relating to its operations pursuant to this Agreement separate and segregated from such records relating to its other operations.

Contractor shall maintain at least the following records:

- Audited financial statements for Contractor or, if a guarantee was provided, for the parent company guarantor as a whole;
- Financial statements (compiled, reviewed or audited) of revenue and expense for this Agreement segregated from the other operations of Contractor (including without limitation those operations of Contractor in City and surrounding jurisdictions which are not covered by this Agreement), including a description of segregation methodology; and,
- Complete descriptions of related party transactions (corporate and/or regional management fees, intercompany profits from transfer, processing or Disposal operations).

8.2.3 Solid Waste Records

Contractor shall maintain and make available to City upon request the following records relating to its operations pursuant to this Agreement:

- a) Customer services and Billing/City payment records;
- b) Records of tons Collected, processed, diverted and Disposed by waste stream (Refuse, Recycling and Green Waste), by Customer type (Cart, Residential Bin, Commercial and Roll-off Box), and the Facilities (Transfer Station, MRF, or landfill) where such material was taken;
- c) Contractor shall code Customer records in manner which easily identifies them as residential vs. commercial;
- d) Quantity of Recyclable Materials recovered by material type, as well as quantity of material diverted from landfills in compliance with AB 939;
- e) Bulky Item and special event tonnages, including tons disposed and diverted;

- f) Routes;
- g) Facilities, equipment and personnel used;
- h) Facilities and equipment operations, maintenance and repair;
- i) Number and type of Refuse, Recycling and Green Waste Containers in service by container type (Cart, Residential Bin, Commercial Bin, Roll-Off Box) and size;
- j) Complaints; and,
- k) Missed pickups.

8.2.4 CERCLA Defense and Disposal Records

City views the ability to defend against CERCLA, State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, City regards the ability to prove where Solid Waste Collected in 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 that can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of disposal and other reports required in Section 8.2.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to City. Contractor shall continue to retain records in accordance with Section 8.2.3 for five (5) years, and disposal records for twenty-five (25) years, after the term during which Collection services are to be provided pursuant to this Agreement. Contractor agrees to notify City's Risk Manager and the City Attorney at least ninety (90) days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

8.2.5 Other Programs' Records

Records for other programs shall be tailored to specific needs. In general, they shall include:

- a) Plans, tasks, and milestones; and,
- b) Accomplishments in terms such as dates, activities conducted and numbers of participants and responses; and,

- c) Records relating to programs or other activities undertaken by Contractor pursuant to the Agreement that may help City to complete reporting related to City's sustainability and environmental objectives.

8.2.6 Audit

City may conduct an audit of Contractor at any time. The scope of the audit and auditing party will be determined by the City Council; and the scope may include, but is not limited to, compliance with terms of this Agreement, Customer service levels and Billing, fee payments, Gross Receipts, tonnage and verification of Diversion rate.

Contractor will fund biennial audits. The first hauler-funded audit, to be performed during 2020, will be based on Contractor's reports and records from the start of service (August 1, 2018) through calendar year 2019. Contractor-funded audits will be performed every other year thereafter. The auditor shall be chosen by the City Council. At City's discretion, Contractor will reimburse the audit cost to City, or directly pay invoices from City's chosen auditor. The audit scope of work will be determined by City and reflect a cost of such audits up to \$65,000.00 for the first audit, and \$55,000.00 for each subsequent biennial audit in 2020 dollars. The \$55,000.00 amount in subsequent years shall be increased annually by the change in CPI identified in Section 6.4 as the change to the "all other" component.

Should an audit conducted or authorized by City disclose that fees payable by Contractor were underpaid by three percent (3%) or more, that tonnage was misreported by three percent (3%) or more, or that more than three percent (3%) of the Customers were inaccurately Billed based on the auditor's sampling for the period under review, City may expand the scope of the audit and recover additional audit costs from Contractor.

8.2.7 Payments and Refunds

Should an audit disclose that fees payable by Contractor were underpaid or that Customers were overcharged for the period under review, Contractor shall pay to City any underpayment of fees and/or refund to Contractor's Customers or to City, as directed by City, any overcharges within thirty (30) days following the date of the audit; reimbursement to City or Customers for underpayments and overcharges may be limited to three (3) years. Contractor credit for overpayment of City fees shall be limited to three (3) years. Contractor shall pay interest to the City for any underpayment or overcharges at an annual rate of twelve percent (12%). Undercharges shall not be billed in arrears for more than ninety (90) days of service, with any remaining undercharges absorbed by Contractor. Should an audit disclose that fees were

overpaid, City may credit such amounts against future fees payable by Contractor or may select another method of reimbursement.

8.3 Reports

8.3.1 Report Formats and Schedule

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by City. In addition to submitting all reports on paper, Contractor agrees to submit all reports in an electronic format approved by City, compatible with City's software/computers at no additional charge.

Monthly tonnage reports shall be due by the 20th of the following month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter (January 20th, April 20th, July 20th, October 20th). Annual reports for which a date is not otherwise specified in this Agreement shall be submitted within twenty (20) calendar days after the end of the calendar year, by January 20th. If requested, Contractor's complaint summary, described in Section 5.1.2, shall be sent to the City Manager within five (5) business days of request.

All reports shall be submitted to:

City Manager
City of Norwalk
12700 Norwalk Boulevard
Norwalk, California 90650

8.3.2 Monthly Reports

The monthly report shall include, at a minimum:

The Solid Waste tonnage Collected by Contractor, sorted by Customer type (Cart, Bin and Roll-off Box), the type of Solid Waste Collected and diverted (e.g., Refuse, Recycling, Green Waste) in tons, and the Facilities where the tons were processed or Disposed.

8.3.3 Quarterly Reports

The quarterly report shall include, at a minimum, the information otherwise reported monthly, plus the following:

- a) Customer counts – the number of residences serviced and the number of commercial/industrial Customers serviced.
- b) Number of missed pickups, including second requests for a make-up.
- c) Listing of all facilities used.
- d) Warning notices issued for contaminated Refuse, Recyclable Materials and Green Waste Containers.
- e) Narrative summary of problems encountered and actions taken with recommendations for City, as appropriate.
- f) Complaint log summary maintained per Section 5.1.2.
- g) Description of Contractor outreach activities and copies of promotional and public education materials sent during the month.
- h) Other information or reports that City may reasonably request or require.

Note: Quarterly franchise fee payment statement due per Article 3 shall be submitted separately, accompanying the fee payment.

8.3.4 Annual Report

The annual report shall include, at a minimum, the information otherwise reported monthly and quarterly, plus the following:

- a) A summary of the number of Containers in service as of December 31 by size (number of gallons, number of yards), sector (Residential Cart, Commercial Cart, Bin and Roll-off Box), service frequency, and type of service (Refuse, Recycling and Green Waste). Identify which Containers represent free City services.
- b) Number of routes and route hours per day by type of service as of December 31.
- c) An inventory of bin and cart route collection vehicles used in the City of Norwalk during the past year, including make, model year, license number, type of fuel, whether a regular vehicle or spare, and whether in compliance with requirements of Section 4.6.2.

- d) Other information or reports that County may reasonably request or require.

8.3.5 Financial Report

City may, at City's option, request and be provided with Contractor's financial reports/statements for the most recently completed fiscal year in connection with any audit, extraordinary rate adjustment request, or verification of other information required under this Agreement.

The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles ("GAAP") and audited, in accordance with Generally Accepted Auditing Standards ("GAAS"), by a certified public accountant ("CPA") licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The cost of preparation of the financial statements and audit shall be borne by Contractor as a direct cost of service.

In addition to the above audited financial statements, Contractor shall provide to City the supplemental schedule of results of operations in the City on a compiled basis. The supplemental schedule will show Contractor's specific revenues and expenses in connection with the operations provided for in this Agreement, separated from operations in other geographical areas. The supplemental schedule need not be audited; however, the total results of Contractor's operations per the supplemental schedule must agree to the audited financial statements.

8.4 Reporting Adverse Information

Contractor shall provide City two (2) copies (one to the City Manager, one to the City Attorney) of all reports, pleadings, applications, notifications, notices of violation, communications or other material relating in any way to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court. Copies shall be submitted to City within thirty (30) days of receipt by Contractor, or sooner if reasonably apparent that to do so is materially relevant; any responses by Contractor shall be submitted to City simultaneously with Contractor's filing or submission of such matters with said agencies. Contractor's routine, scheduled correspondence to said agencies need not be routinely submitted to City, provided there is nothing included in such routine correspondence

that could be considered adverse, but such correspondence shall be made available to City promptly upon City's written request.

8.5 Right to Inspect Records

City shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Contractor or its Affiliates that City shall deem, in its sole discretion, necessary to evaluate annual reports, and Contractor's performance provided for in this Agreement. Contractor shall make all records and documents to be reviewed and inspected by City as a part of any audit or other record review conducted by City, available for City's review, inspection and copying within five (5) days of receiving written notice from City requesting the same.

8.6 Failure to Report

The refusal or failure of Contractor to file any required reports, or to provide required information to City, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a material breach of the Agreement as described in Section 11.1 and shall subject Contractor to all remedies which are available to the City under Agreement or otherwise.

ARTICLE 9

INDEMNIFICATION, INSURANCE, BOND AND LETTER OF CREDIT

9.1 Defense of Agreement

Contractor agrees to, and shall timely, take all actions that are reasonably necessary to defend the validity and enforceability of this Agreement and shall pay all costs related to such defense. Contractor shall defend, indemnify, protect and hold harmless, City, its officers, agents and employees from any and all claims, actions or proceedings to attack, set aside, void, annul or seek monetary damages resulting from an approval by City of this Agreement. City shall promptly notify Contractor of any such claim, action, or proceeding. City and Contractor shall meet in good faith in an effort to come to a mutual agreement for a joint defense; provided that City shall be entitled to select legal counsel of its choice to conduct the defense if an agreement cannot be reached. Contractor's obligations to pay all costs, defend, indemnify, protect and hold harmless under this Section shall not be altered in the event City retains separate counsel and shall also include reimbursement to City for time spent by its in-house City attorneys responding to the litigation.

9.2 Indemnification

Contractor hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, consultants and agents (collectively, "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 or resulting from and in any way connected with (a) the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement; (b) the failure of Contractor, its officers, employees, agents, contractors and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (c) the acts of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity 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 the Indemnitees' negligence, but shall not

extend to matters resulting from the 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 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, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend the 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, or asserting rights under the United States or California Constitutions or any federal or state law to provide Solid Waste Handling Services in the City.

If City exercises its option under Section 2.11, in writing, to direct refuse to another landfill that is not owned or operated by Company or its affiliates, or a landfill that has not been previously used by Company in performance of this Agreement, then this indemnity shall not apply to that portion of the waste that City has redirected. Waiver of this indemnification will not apply to residue left over from processing activities that is disposed, even if City directs waste to a particular processing facility.

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.

9.3 Hazardous Substances Indemnification

A. Without regard to any insurance coverage or requirements, 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 harmless Indemnitees 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 Indemnitee is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise clean up, any Hazardous Contaminant (as defined herein); 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 any Environmental Law;
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 of 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;
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.

D. For purposes of this Section, the term "Hazardous Contaminant" shall mean any Hazardous Substance, any Hazardous Waste, 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 any

referenced statutory or regulatory provisions made before or after the date of execution of this Agreement.

E. 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.

9.4 AB 939 Indemnification and Guarantee

A. Contractor agrees to indemnify and hold harmless City from and against all fines and/or penalties imposed by CalRecycle in the event the source reduction and Recycling goals or any other requirement of AB 939 are not met by City with respect to the waste stream Collected under this Agreement.

B. Contractor warrants and represents that it is familiar with City's waste characterization study as set forth in City's Source Recovery and Recycling Element ("SRRE"), and that it has the ability to and will provide sufficient programs and services to ensure 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, with respect to that portion of the Solid Waste generated in City that is the subject of this Agreement.

9.5 Insurance

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.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 00 01).
2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. Contractor shall maintain in force for the term of this Agreement limits no less than:

1. Comprehensive General Liability: Ten Million Dollars (\$10,000,000.00) limit aggregate and Five Million Dollars (\$5,000,000.00) limit per occurrence for bodily injury, Personal injury and property damage.
2. Automobile Liability: Ten Million Dollars (\$10,000,000.00) limit aggregate and Five Million Dollars (\$5,000,000.00) single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000.00) per accident, One Million Dollars (\$1,000,000.00) policy limit for bodily injury or disease; One Million Dollars (\$1,000,000.00) per each employee bodily injury or disease.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention's as respects City, its officials, employees and agents; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
 - a) City, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; Premises owned, leased or used by Contractor; or vehicles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its elective and

appointive boards, commissions, officials, employees, agents or volunteers.

- b) Contractor's insurance coverage shall be primary insurance as respects City, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
 - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, elective and appointive boards, commissions, employees, agents or volunteers.
 - d) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e) The commercial general and automobile liability policies required by this Agreement shall allow City, as additional insured, to satisfy the self-insured retention ("SIR") and/or deductible of the policy in lieu of the Contractor (as the named insured) should Contractor fail to pay the SIR or deductible requirements. The amount of the SIR or deductible shall be subject to the approval of the City Attorney and the Finance Director. Contractor understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this Agreement. Failure by Contractor as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should City pay the SIR or deductible on Contractor's behalf upon the Contractor's failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, City may include such amounts as damages in any action against Contractor for breach of this Agreement in addition to any other damages incurred by City due to the breach.
2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against City, its officials, elective and

appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Contractor for City.

3. All Coverages - Each insurance policy required by this clause shall be endorsed to provide City with a thirty (30)-day notice of cancellation (except for nonpayment for which a ten (10)-day notice is required) or nonrenewal of coverage for each required coverage.

E. Acceptability of Insurers. The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

F. Verification of Coverage. Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this clause. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies, and shall have all required endorsements. 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. City reserves the right to require complete, certified copies of all required insurance policies at any time.

Renewal certificates will be furnished periodically to City to demonstrate maintenance of the required coverage throughout the Term.

G. Companies and Subcontractors. Contractor shall include all companies and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each contractor and subcontractor. All coverages for companies and subcontractors shall be subject to all of the requirements stated herein.

H. Required Endorsements.

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days (or ten (10) days in the event of cancellation for non-payment) prior written notice by certified mail, return receipt requested, shall be given to

City in the event of cancellation or non-renewal of this policy. Such notice shall be sent to:

City Manager
City of Norwalk
12700 Norwalk Boulevard
Norwalk, California 90650

2. The Public Liability policy shall contain endorsements in substantially the following form:

a) “Thirty (30) days (or ten (10) days in the event of cancellation for non-payment) prior written notice shall be given to City in the event of cancellation or non-renewal of this policy. Such notice shall be sent to:

City Manager
City of Norwalk
12700 Norwalk Boulevard
Norwalk, California 90650

b) “Contractor agrees to endorse the third party general liability coverage required herein to include as additional insureds City of Norwalk, its officials, employees and agents, using standard ISO endorsement No. CB 2010 with an edition date of 1985, or equivalent provisions as determined acceptable by the Office of the City Attorney for the City of Norwalk in its sole discretion. Contractor also agrees to require all contractors, subcontractors and anyone else involved in any way with the project contemplated by this agreement, to do likewise.”

c) “This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only.”

d) “Inclusion of City as an insured shall not affect City’s rights as respects any claim, demand, suit or judgment brought or recovered against Contractor. This policy shall protect Contractor and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Contractor’s liability as set forth in the

policy beyond the amount shown or to which Contractor would have been liable if only one party had been named as an insured.”

I. Other Insurance Requirements.

1. In the event any services are delegated to another company or subcontractor, Contractor shall require such company or subcontractor to provide statutory workers’ compensation insurance and employer’s liability insurance for all of the company’s or subcontractor’s employees engaged in the work in accordance with this Section 9.5. The liability insurance required by this Section 9.5 shall cover all companies or subcontractors or the companies or subcontractors must furnish evidence of insurance provided by it meeting all of the requirements of this Section 9.5.
2. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor of any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against Contractor or any company or subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to City.

If Contractor fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Contractor’s expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due Contractor.

J. Requirements not Limiting.

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Contractor maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.”

9.6 Faithful Performance Bond.

Concurrently with execution of this Agreement, Contractor shall deliver to City a performance bond in the sum of the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00),] in the form provided in Exhibit 4, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his or her power of attorney.

9.7 Faithful Performance Letter of Credit

In addition to a corporate surety bond as noted in Section 9.6 above, Contractor shall furnish an irrevocable letter of credit in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00), from a financial institution acceptable to the City and in a form acceptable to the City Attorney as security for the performance of this Agreement (the “LOC”). The LOC shall be the sole responsibility of Contractor, and shall be released within thirty (30) days after both (i) the expiration of the term of this Agreement, or upon the earlier termination hereof; and (ii) Contractor’s satisfactory performance of all obligations hereunder.

9.8 Forfeiture of Performance Bond

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

9.9 Forfeiture of Letter Of Credit (LOC)

Thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, the LOC may be drawn upon by City for purposes including, but not limited to:

- a. Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City; and/or,

- b. Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor, including but not limited to the liquidated damages described in Section 11.3.

City may draw upon the entire LOC and convert it to a cash deposit if Contractor fails to cause the LOC to be extended or replaced with another satisfactory letter of credit no later than sixty (60) days prior to its expiration during the term hereof.

9.10 Performance Security Beyond Service Term

Some Agreement requirements extend beyond the Term and other requirements, such as minimum Diversion rates per Section 4.2.5, will not be substantiated until after the final service date. Therefore, Contractor shall not terminate the Performance Bond or LOC, and will renew them to ensure continuous availability to City, until receiving a written release from City. The Performance Bond and LOC will automatically expire at the end of twenty-four (24) months after the end of the Term, unless City has notified Contractor in writing as to a specific contractual area of concern yet to be resolved, instructing Contractor to retain all or a portion of the Performance Bond and/or LOC. Neither permission from City to discontinue holding the Performance Bond and/or LOC, nor permitted expiration after twenty-four (24) months, shall relieve Contractor of payments to City that may be due, or may become due.

ARTICLE 10

CITY'S RIGHT TO PERFORM SERVICE

10.1 General

In the event that Contractor, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or Dispose of any or all Solid Waste as required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, Solid Waste should accumulate in City to such an extent, in such a manner, or for such a time that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right, but not the obligation, (1) to perform, or cause to be performed by a third party, such services itself with its own or other personnel without liability to Contractor; and/or (2) to take possession of any or all of Contractor's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property, directly or through contracting with a third party, to Collect and transport any Solid Waste generated within the City which Contractor would otherwise be obligated to Collect, transport and properly Dispose of or process pursuant to this Agreement.

Notice of City's determination to effect its rights under this Section may be given orally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within twenty-four (24) hours of the oral notification. All actions that may be taken by City under this Article 10 may be taken directly, or through City contracting with a third-party.

Contractor further agrees that in such event:

- A. It will take direction from City to effect the transfer of possession of equipment and property to City for City's use, or for use by any Person or entity designated by City.
- B. It will, if City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.
- C. City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if City so desires, employees previously or then employed by Contractor. Contractor further agrees, if City so requests, to furnish City the services of any or all management or office personnel employed by Contractor whose services

are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the Billing and Collection of fees for these services.

City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 11.4, City shall pay to Contractor the reasonable rental value of the equipment and facilities, possession of which is taken by City, for the period of City's possession, if any, which extends beyond the period of time for which Contractor has rendered Bills in advance of service, for the class of service involved. If the interruption or discontinuance in service is caused by any other reason, regardless of City's implementation of options under this agreement, City may consider this a default.

10.2 Billing and Compensation to City During City's Possession

Contractor agrees that it shall reimburse City for any and all costs and expenses incurred by City beyond revenue Billed and received by City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of Contractor under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by City to Contractor of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

10.3 City's Right to Relinquish Possession

It is further mutually agreed that City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to Contractor and thereupon demand that Contractor resume the Solid Waste Handling Services as provided in this Agreement, whereupon Contractor shall be bound to resume the same.

10.4 City's Possession Not A Taking

It is expressly agreed between the Parties that City's exercise of its rights under this article; (1) does not constitute a taking of private property for which compensation must be paid, (2) shall not create any liability on the part of City to Contractor, and (3) does not exempt Contractor from any of the indemnity and insurance provisions of this Agreement, which are meant to extend to circumstances arising under this Section provided that Contractor is not

required to indemnify City against claims and damages arising from the sole negligence of City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time City has taken possession of such vehicles.

10.5 Duration of City's Possession

City's right pursuant to this Article to retain temporary possession of Contractor's facilities and equipment, and to render Collection services, shall terminate when City determines that such services can be resumed by Contractor, or when City no longer reasonably requires such property or equipment. In any case, City has no obligation to maintain possession of Contractor's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Contractor.

ARTICLE 11

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

11.1 Events of Default

All provisions of this Agreement to be performed by Contractor are considered material. Each of the following (by way of example and not as an exhaustive list) shall constitute an event of default by the Contractor.

- A. **Fraud or Deceit or Misrepresentation.** If the Contractor engages in, or attempts to practice, any fraud or deceit upon City or makes a misrepresentation regarding material information to City.
- B. **Insolvency or Bankruptcy.** If Contractor becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. **Failure to Maintain Insurance Coverage and Valid Permits and Licenses.** If Contractor fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage, as well as valid permits and licenses as required by this Agreement.
- D. **Violations of Regulation.** If Contractor violates any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred until a final decision adverse to Contractor is entered.
- E. **Failure to Pay.** Failure to make any payments required under this Agreement, including, but not limited to, franchise fee payments.
- F. **Failure to Cooperate with Audits.** Failure to complete, perform or cooperate with any audit as described by this Agreement.
- G. **Failure to Submit Reports or Documentation.** Failure to complete or to provide required information, reports and/or documents to City as required by this Agreement.
- H. **Acts or Omissions.**
 - A. Any act or omission by Contractor relative to the services provided under this Agreement which violates the terms, conditions, or requirements of this Agreement, or AB 939,

or any law, statute, ordinance, order, directive, rule, or regulation issued pursuant to AB 939 shall constitute a default by Contractor. Any failure to correct or remedy any such violation within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter, shall constitute a default by Contractor.

B. Any situation in which Contractor or any of its officers, directors or employees is found guilty of any crime related to the performance of this Agreement, or of any crime related to anti-trust activities, illegal transport or Disposal of hazardous or toxic materials, or bribery of public officials shall constitute a default by Contractor. The term “found guilty” shall be deemed to include any judicial determination that Contractor or any of Contractor’s officers, directors or employees is guilty as well as any admission of guilt by Contractor or any of Contractor’s officers, directors or employees including, but not limited to, the plea of “guilty”, “nolo contendere”, “no contest”, and “guilty to a lesser charge.”

I. **False or Misleading Statements.** Any representation or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

J. **Attachment.** The seizure of, attachment of, or levy on, the operating equipment of Contractor, including, without limits, its equipment, maintenance or office facilities, or any part thereof.

K. **Suspension or Termination of Service.** If Contractor ceases to provide all or a portion of the Collection, processing or Recycling services, or any other Solid Waste Handling Services as required under this Agreement (including, without limitation, failure to provide service due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action, unless all requirements of Section 11.4 are met) for two (2) or more consecutive days.

L. **Failure to Provide Assurance of Performance.** If Contractor fails to provide reasonable assurances of performance as required under Section 11.6.

M. **Commingling of Recyclables With Refuse/Landfilling of Recyclables.** If Contractor empties Containers of properly set out Recyclable Materials or Green Waste into a Refuse load,

or transports Recyclable Materials or Green Waste to a landfill or other location at which the material will not be diverted from landfilling (with the exception of Green Waste used as alternative daily cover provided full Diversion credit is received).

N. **Failure to Meet Section 4.2.5 Diversion Goal.** Failure to meet the minimum recycling requirements identified in Section 4.2.5 for two (2) consecutive calendar years.

Contractor shall have five (5) business days from the time it is given notification by City to cure any default arising under subsections E, F, G, J, K and L, provided, however, that City shall not be obligated to provide Contractor with a notice and cure opportunity if Contractor has committed the same or similar breach within a twenty-four (24)-month period. It is expressly understood that Contractor is not entitled to receive notice of default, or to cure such default, with respect to those matters listed in subsections A, B, C, D, H, I, M and N above, and City, if it chooses, may immediately begin termination proceedings per Section 11.2 below.

11.2 Right to Terminate Upon Default and Right to Specific Performance

If Contractor commits a material breach included in Section 11.1 above (and, if permitted to cure, does not cure it within the five (5) days), City shall be entitled to unilaterally terminate this Agreement or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other conditions it deems appropriate short of termination) as it shall deem proper. Should City decide to terminate this Agreement upon a default by Contractor, City shall have the right to do so upon giving ten (10) days' notice to Contractor, and shall not be required to take any further action (such as holding any hearing, bringing any suit or taking any other action.)

City may seek to revoke or suspend this Agreement for violation of any other provisions of this Agreement in accordance with the Norwalk Municipal Code Section 8.48.

City's rights to terminate this Agreement and to take possession of Contractor's Facility and/or equipment are not exclusive, and City's termination of this Agreement shall not constitute an election of remedies. Instead, such remedies shall be in addition to any and all other legal and equitable rights and remedies which City may have.

By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality service, the time required to effect alternative service, and the rights granted by City to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City

shall be entitled to seek injunctive relief and/or specific performance of any breach of this Agreement.

11.3 Liquidated Damages

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

B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable Solid Waste Handling Service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in entering this Agreement with it. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such breaches as an event of default under this Article 11, 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 the Agreement was made.

Contractor _____ City _____
Initial Here _____ Initial Here _____

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

1. Collection Reliability

- a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceeds five (5) such failures per calendar year: \$50.00
- b) For each failure, which exceeds ten (10) such failures annually, to Collect Solid Waste from any established Customer account on the scheduled Collection day and not make up the Collection within the time allotted per Section 4.6.1.3: \$50.00
- 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: \$50.00
- d) For each twenty-four hour period (excluding Sundays and holidays identified in Section 4.6.1.1), or portion thereof, for which Contractor is late in delivering a temporary Roll-Off Box or Bin in accordance with Sections 4.1.6 and 4.1.11: \$50.00

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 or which exceeds ten (10) such occurrences per calendar year: \$25.00
- b) For each occurrence in violation of the City's noise ordinance which exceeds ten (10) per calendar year: \$150.00

- c) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences per calendar year: \$150.00
- d) For each failure to clean up Solid Waste spilled from Solid Waste Containers within ninety (90) minutes which exceeds ten (10) such failures per calendar year: \$150.00

3. Customer Responsiveness

- a) For each failure to initially respond to a Customer complaint within one (1) business day in accordance with Section 5.1.2, and for each additional day in which the complaint is not addressed, which exceeds five (5) per calendar year: \$100.00
- b) For each failure to process Customer complaints as required by Article 5, Section 5.1.2, which exceeds five (5) per calendar year (“process” in this case refers to the record keeping obligations in Section 5.1.2, and does not include the obligation to respond to and address complaints that is addressed in Section 11.3.B.3.a)): \$100.00
- c) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within twenty-four (24) hours (except Sundays and holidays) of request from City or Customer, which exceeds five (5) per calendar year: \$50.00 per day
- d) For each failure to repair or replace a damaged or missing Container within two (2) business days of request from City or Customer, which exceeds five (5) per calendar year: \$ 50.00 per day
- e) For each failure to process a claim for damages within thirty (30) days from the date submitted to Contractor: \$100.00
- f) For each additional thirty (30)-day increment of time in which Contractor has failed to resolve a claim for damages within thirty (30) days from the claim date: \$100.00

4. Diversification Efforts

- a) For each calendar year in which Contractor fails to provide support to the City within thirty (30) days of year-end, documenting that it diverted at least the minimum tonnage required by Section 4.2.5 under this Agreement: \$25.00 for each ton below tonnage level necessary to meet Diversion goal
- b) For every Recycling or Green Waste Container Collected as Refuse without issuing a red tag per Section 4.2.3 which exceeds ten (10) failures per calendar year: \$25.00 per Cart

5. Timeliness of Submissions to City

Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a monthly, quarterly, or annual report, or the franchise fee calculation support statement, or any other report required under this Agreement, is late, the daily liquidated damage amount shall be: \$50.00 per day

6. Accuracy of Billing

Each Customer invoice that is not prepared in accordance with the City's approved rate schedule, or includes charges not identified on the City-approved rate schedule or otherwise approved in writing by the City, in excess of ten (10) invoices annually, and that are not accurately corrected in the next Billing run: \$25.00 per invoice, not to exceed \$2,500.00 per Billing run

7. Cooperation with Service Provider Transition

- a) For each day routing information requested by City Manager in accordance with Section 12.8 is received after City-established due dates, both for preparation of a request for proposals and for new service provider's implementation of service: \$1,000.00/day
- b) For each day delivery of keys, access codes, remote controls, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new service provider servicing Customers with access issues, as described in Section 12.8: \$1,000.00/day

- c) For delay in not meeting the requirements contained in Sections 7.3 (route audit) and 12.8 in a timely manner, in addition to the daily liquidated damages for breach under 7(a) and 7(b) above, liquidated damages of: \$10,000.00

8. Vehicle Compliance

For each vehicle that Contractor uses a solid waste collection vehicle that is not in compliance with the natural gas fuel requirements of Section 4.6.2.B: \$100.00 per vehicle per collection day

The City Manager may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints.

Prior to assessing liquidated damages, the City Manager shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of the City Manager 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 its 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. **Amount.** The City Manager may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

D. **Timing of Payment.** Contractor shall pay any liquidated damages assessed by the City Manager within ten (10) days after they are assessed. If they are not paid within the ten (10)-day period, City may proceed against the performance bond required by the Agreement or find Contractor in default and terminate this Agreement pursuant to Section 11.2, or both.

11.4 Excuse from Performance

11.4.1 Force Majeure

The Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

11.4.2 Labor Unrest

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees or directed at the Contractor will be considered an excuse from performance to the extent that Contractor meets the terms of this Section 11.4. Notwithstanding other remedies to which City shall be entitled under this Agreement in event of failure to perform, in the event of Contractor's failure to perform, or anticipated failure to perform, due to labor unrest, Contractor shall:

- 1) Provide a contingency plan to the City Manager within ninety (90) days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval, and Contractor shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction. Plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized, and detailed communications procedures to be used.
- 2) Notify City Manager sixty (60) days prior to the expiration of its drivers' labor agreement.
- 3) Meet the requirements agreed to in the contingency plan.
- 4) Meet requirements of 11.4.3 below.

Contractor shall meet all requirements under this Section or City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 11.1, 11.2 and 11.3, in which case

Contractor is not excused from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

11.4.3 Procedures In Event of Excused Performance

The party claiming excuse from performance under Section 11.4.1 or 11.4.2 shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section. Throughout service disruption, Contractor shall:

- 1) Provide City with a minimum of daily service updates.
- 2) Notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, Contractor shall update its website and shall provide ongoing updates to City for use on its website. Should enhanced contact technologies become available, Contractor shall use such methods upon approval from City.

The interruption or discontinuance of Contractor's services caused by one or more of the events excused shall not constitute a default by Contractor under this Agreement.

Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of thirty (30) days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice.

11.5 Notice, Hearing and Appeal of City Breach

- A. 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. A hearing officer shall be appointed by the City Manager, and the hearing shall occur as soon as reasonably possible, or on such date as mutually agreed 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 shall be advisory only.
- B. 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 a 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.

- C. 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.

11.6 Assurance of Performance

City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as City may require. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 Relationship of Parties

The Parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of City, nor as a partner or joint venture with City. No employee or agent or Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the Solid Waste Handling Services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Affiliates, contractors, subcontractors and agents. Neither Contractor nor its officers, employees, Affiliates, contractors, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

12.2 Compliance with Law

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and any federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended, including but not limited to the payment of prevailing wage, if applicable.

12.3 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

12.4 Jurisdiction

Except for those matters where Federal Courts have exclusive jurisdiction, any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the Parties agree that this Agreement is made in and will be performed in Los Angeles County.

12.5 Assignment

Except as may be provided for in Article 10 (City's Right to Perform Service), Contractor shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement (collectively referred to as an "assignment") to any other Person without the prior written consent of City. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a material breach of this Agreement.

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 assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result in a change of control of Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor of 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, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

Contractor acknowledges that this Agreement involved 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 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 services to be rendered by Contractor under this Agreement.

If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its sole and absolute discretion. Any request for an assignment must be approved 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 pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. An advance payment towards expenses may be requested by City prior to City consideration of any assignment request and 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.
- b) Contractor shall pay a transfer fee to the City equal to one percent (1%) of the annual Gross Receipts for the most recent twelve (12) months prior to the effective date of the change of ownership, multiplied by the number of remaining years, or fraction thereof, under this Agreement. (This requirement will not be required in the event of an assignment to an Affiliate of Contractor.)
- c) Contractor shall furnish City with audited financial statements for itself, and the proposed assignee's operations for the immediately preceding three (3) operating years. (This requirement shall not be required of an Affiliate.)
- d) Contractor shall furnish City with a pro-forma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such pro-forma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Contractor's operations. (This requirement shall not be required of an Affiliate.)
- e) Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under 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 management operations due to any significant failure to comply with state, federal or local Environmental Laws and that the assignee has provided City with a complete list of any such citations and censures; (iii) that the proposed assignee has at

all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state and local laws regulating the Collection and Disposal of Solid Waste including Hazardous Substances; 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.

Under no circumstances shall City be obliged to consider any proposed assignment by City if Contractor is in default at any time during the period of consideration. Should City consent to any assignment request, such assignment shall not take effect until all conditions relating to City's approval have been met.

12.6 Contracting or Subcontracting

Contractor shall not utilize any subcontractors, in direct interaction with City customers or City staff, for the performance of the services under this Agreement, except with the consent of the City Manager, which may be withheld or delayed at its sole and absolute discretion.

12.7 Binding on Assigns

The provisions of this Agreement shall inure to the benefit to and be binding on the permitted assigns (if any) of the Parties.

12.8 Cooperation in Preparation for Termination or Expiration of Contract

Prior to, and 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. Cooperation is required in a timely manner to assist with City's preparation of a request for proposals or a new agreement, as well as at the time of transition. 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 use diligent, good faith efforts to provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Contractor shall be responsible for coordinating transfer immediately after Contractor's final pickups, so as not to disrupt service. 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, and provide an updated list two (2) weeks before the transition and a final list of changes the day before the transition. Contractor shall provide means of access to the new service provider at least one (1) full business day prior to the first day of Collection by another party, and always within sufficient time so as not to impede in any way the new service provider from easily servicing all Containers.

12.9 Parties in Interest

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties to it and their representatives, successors and permitted assigns.

12.10 Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either Party of any moneys which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other Party of any provision of this Agreement.

12.11 Contractor's Investigation

Contractor has made an independent investigation (satisfactory to Contractor) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

12.12 Condemnation

City fully reserves the rights to acquire Contractor's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the Parties set forth in Article 10.

12.13 Notice

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the Parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City:

City Manager
City of Norwalk
12700 Norwalk Boulevard
Norwalk, California 90650

If to Contractor: Arakelian Enterprises, Incorporated (dba Athens Services)
15045 Sal Lake Avenue
City of Industry, California 91746

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) days from the date it is deposited in the mail.

12.14 Representatives of the Parties

References in this Agreement to "City" shall mean the City Council and all actions to be taken by City shall be taken by the City Council except as expressly provided herein. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority so delegated to them.

Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of Contractor in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his or her authority to bind Contractor. City may rely upon action taken by such designated representative as actions of Contractor unless they are outside the scope of the authority expressly delegated to him/her by Contractor as communicated to City.

12.15 City Free to Negotiate with Third Parties

City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste for periods during which this Agreement has expired or been terminated. Without limiting the generality of the foregoing, City may solicit proposals from Contractor and from third parties for the provision of Solid Waste Handling Services which are the subject of this Agreement, including without limitation Collection services, Disposal services, Recycling services, Green Waste services and processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination of this Agreement pursuant to Section 11.1 or otherwise.

12.16 Compliance with Municipal Code

Contractor shall comply with those provisions of the municipal code of City which are applicable, and with any and all amendments to such applicable provisions during the Term of this Agreement.

12.17 Privacy

Contractor shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, 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 stream analyses which may be required by AB 939. This provision shall not apply to reports or records provided to City pursuant to this Agreement.

12.18 Proprietary Information, Public Records

The City acknowledges that a number of the records and reports of Contractor are proprietary and confidential. Contractor is obligated to permit City inspection of its records on demand and to provide copies to City where requested. City will endeavor to maintain the confidentiality of all proprietary information provided by Contractor. Notwithstanding the foregoing, any documents provided by Contractor to City that are public records may be disclosed pursuant to a proper public records request.

12.19 Entire Agreement

This Agreement contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals (including Contractor's Proposal), and agreements between the Parties, whether written or oral. The Parties acknowledges 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.

12.20 Section Headings

The article headings and 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.

12.21 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or re-codified, unless otherwise specifically provided.

12.22 Interpretation

This Agreement, including the Exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting.

12.23 Agreement

This Agreement may not be modified or amended in any respect except by a writing signed by the Parties.

12.24 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

12.25 Exhibits

Each of Exhibits identified as Exhibit "1" through "6" is attached hereto and incorporated herein and made a part hereof by this reference.

12.26 Attorneys' Fees

If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover its reasonable attorney's fees and costs. Attorneys' fees shall include attorney's fees on any appeal, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

IN WITNESS WHEREOF, City and Contractor have executed this Agreement as of the day and year first above written.

CITY OF NORWALK
("City")

ARAKELIAN ENTERPRISES, INCORPORATED
(Athens Services) ("Contractor")

DATED: _____

DATED: _____

CITY OF NORWALK

ARAKELIAN ENTERPRISES, INCORPORATED

By: _____
Jennifer Perez
Mayor

By: _____
Ron Arakelian III
Executive Officer

By: _____
Jesus M. Gomez
City Manager

By: _____
Gary M. Clifford II
Executive Vice President

APPROVED AS TO FORM:

By: _____
Roxanne Diaz
City Attorney

ATTEST:

Theresa Devoy, CMC
City Clerk

EXHIBIT 1 INITIAL MAXIMUM RATES

Following are the rates for August 1, 2018 through August 31, 2020:

Monthly Residential Cart Service Rates*			
Standard Service includes one refuse, one or more recycling, and up to two green waste carts.			
Cart Size:			96-gallon
Standard Service – based upon refuse cart size			\$16.75
Senior Rate (1)			\$ 4.19
Additional Refuse Cart – above one			\$ 6.75
Additional Recycling Cart			\$0
Each Green Waste Cart above two	\$5.00 any size		
Other Residential Cart Rates and Services* (Charged in Addition to Monthly Cart Service Rates)			
Walk-Out Service – authorized disabled customers			No charge
Additional Special Overage Pickup for Automated Cart Customers (in excess of two pickups per year)			\$6.00 per pickup
Cart Exchange (in excess of free exchanges to be provided under Section 4.5.1.1)			\$17.00 per exchange

*Including all City fees.

(1) Senior rate includes one 32-gallon refuse cart, plus one recycling and one green waste cart (any size recycling or green waste cart). The senior rate shall be made available to qualified senior citizen customers. The qualification criteria is set forth on the City's "Reduced Disposal Fees Application Form", as it now exists or may subsequently be amended.

**EXHIBIT 1
INITIAL MAXIMUM RATES (continued)**

Following are the rates for August 1, 2018 through August 31, 2020:

Monthly Bin and Commercial Cart Rates*								
Container Size	Pickups per week							
	1	2	3	4	5	6	7	
<u>Refuse</u>								
Commercial cart	\$67.20	\$108.71	\$152.19	\$195.67	\$237.18	N/A	N/A	
1 yard bin	\$112.66	\$171.95	\$258.92	\$330.07	\$403.20	\$476.33	\$565.27	
2 yard bin	\$132.42	\$219.39	\$304.38	\$389.36	\$476.33	\$561.32	\$668.05	
3 yard bin	\$197.65	\$300.42	\$407.15	\$513.88	\$636.42	\$729.32	\$843.95	
4 yard bin	\$241.13	\$353.79	\$466.45	\$579.11	\$691.76	\$804.42	\$946.73	
6 yard bin	\$355.76	\$557.36	\$733.27	\$905.22	\$1,118.68	\$1,292.61	\$1,508.05	
3 yard compactor(1)	\$395.29	\$600.85	\$814.31	\$1,027.76	\$1,272.85	\$1,458.64	\$1,687.91	
4 yard compactor(1)	\$482.26	\$707.58	\$932.89	\$1,158.21	\$1,383.53	\$1,608.85	\$1,893.46	
<u>Recycling</u>								
Cart – any size	\$11.86	\$17.79	\$23.72	\$27.67	\$33.60	N/A	N/A	
3 yard bin	\$73.13	\$108.71	\$144.28	\$177.88	\$211.48	\$245.08	\$286.59	
Locking Bin Service	\$8	\$12	\$16	\$20	\$24	\$28	\$32	

*Including all City fees.

(1) Rates are for servicing compactor.

EXHIBIT 1
INITIAL MAXIMUM RATES (continued)

Following are the rates for August 1, 2018 through August 31, 2020:

Additional Service Charges	Rate Per Service*
Commercial Bulky Item Pickup, and Residential Bulky Item Pickup Above Section 4.1.12 allocation:	
- 1 to 2 items	\$ 30.00 /pickup
- 3 to 5 items	\$ 64.00 / pickup
- 6 to 10 items	\$ 125.00 /pickup
- 11 to 20 items	\$ 250.00 /pickup
Extra Dump Charge (for all bin sizes)	\$ 45.00 /dump
Bin Return Trip/Dry Run Fee	\$ 50.00
Bin Cleaning (over once per year)	\$ 50.00
Over-loaded Bin Service Fee	\$ 50.00
3-yard Temporary Bin	
- Per dump (delivery, disposal and 7-day rental included)	\$ 137.65
- Extra dump	\$ 79.41
Emergency Service Rates – one crew and one collection truck (disposal at actual cost)	\$ 100 /hour

*Including all City fees.

EXHIBIT 1
INITIAL MAXIMUM RATES (continued)

Following are the rates for August 1, 2018 through August 31, 2020:

Roll-off Box Charges	Rate*
<u>Roll-off Box Service</u> – includes delivery, 7-day rental, pickup and processing/disposal	
- Standard roll-off box – any size – Residential (1)	\$ 616.51
- Standard roll-off box – any size – Commercial (1)	\$ 653.29
- Compactor roll-off box – 40 cubic yard (2)	\$ 780.35
- Standard roll-off box for clean dirt – 10 cubic yard (3)	\$ 400.00
<u>Additional Roll-off Box Fees</u>	
- Per Ton Rates - for each ton over seven tons/load for standard roll-off, or over nine tons for compactor roll-off	\$ 70.00 /ton
- Per day rental after 7 days without a pull	\$ 20.00 /day
- Dry Run/Redelivery/Return Trip/Relocation Fee	\$ 100.00 /trip

*Including all City fees.

(1) Standard roll-off box Includes disposal/processing up to 7 tons.

(2) Compactor roll-off box Includes disposal/processing up to 9 tons.

(3) Standard roll-off box for clean dirt Includes disposal/processing up to 10 tons.

EXHIBIT 2A

EXAMPLE RATE ADJUSTMENT FORMULA

Step One: Calculate percentage change in indices							
Row	Adjustment Factor	Index	A	B	C		
			Old Index Value	New Index Value	Percent Change In Index ((Column B/Column A) -1)		
1	Fuel	(1)	\$ 2.31	\$ 2.40	3.9%		
2	All Other	(2)	229.755	233.806	1.8%		
Step Two: Determine components							
Row	Adjustment Factor	Index	D	E	F		
			Cost Factor Category Weighted as a % of Component Total (3)	Percent Change In Index (from Column C)	Total Weighted Change (Columns D x E)		
3	Fuel	(1)	6.0%	3.9%	0.2%		
4	All Other	(2)	94.0%	1.8%	1.7%		
5	Total		100.0%		1.9%		
Step Three: Apply percentage change to rates							
Row	Example Rate Categories		G	H	I	J	
			Current Customer Rate (4)	Total Weighted Percentage Change (from Column F)	Rate Increase or Decrease (Column G x Column H)	Adjusted Rate (Column G + Column I)	
6	Basic Res. Service		\$ 20.79	1.9%	\$ 0.40	\$ 21.19	
7	Basic Res. Service w/o greenwaste		\$ 17.09	1.9%	\$ 0.32	\$ 17.41	
8	Senior Rate		\$ 9.79	1.9%	\$ 0.19	\$ 9.98	
9	Extra residential refuse cart		\$ 6.44	1.9%	\$ 0.12	\$ 6.56	
10	Commercial 96 gal. can		\$ 52.38	1.9%	\$ 1.00	\$ 53.38	
11	3 cu.yd. bin 1x week		\$ 155.95	1.9%	\$ 2.96	\$ 158.91	
12	3 cu.yd. bin 2x week		\$ 236.66	1.9%	\$ 4.50	\$ 241.16	
13	3 yd bin, extra pickup		\$ 38.00	1.9%	\$ 0.72	\$ 38.72	
14	Locking Lid		\$ 7.31	1.9%	\$ 0.14	\$ 7.45	
15	Standard Roll-off Box		\$ 576.60	1.9%	\$ 10.96	\$ 587.56	
16	Compactor Roll-Off Box		\$ 769.84	1.9%	\$ 14.63	\$ 784.47	
17	10-yd Clean Dirt Roll-Off Box		\$ 308.04	1.9%	\$ 5.85	\$ 313.89	
18	Extra Roll-Off Ton		\$ 45.00	1.9%	\$ 0.86	\$ 45.86	
Step Four: Re-weight cost components							
Row	Adjustment Factor	Index	K	L	M	N	O
			Cost Component (Column D)	Percent Change in Index (Column E)	Change in Cost Component Weightings (Column K x Column L)	Adjusted Cost Component Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
19	Fuel	(1)	6.0%	3.9%	0.2%	6.2%	6.1%
20	All Other	(2)	94.0%	1.8%	1.7%	95.7%	93.9%
21	Total		100.0%			101.9%	100.0%

(1) Natural gas (CNG) information reported by clean cities, west coast - average annual change.*
(2) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average, not seasonally adjusted - average annual change.*
(3) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.
(4) Example rates listed. Adjustment applies to all rates.

EXHIBIT 2B

EXAMPLE RATE ADJUSTMENT FORMULA - CALCULATION FOR AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES

Rate adjustment indices for fuel and “all other” are calculated using the “average annual change” as demonstrated in the example below, measured for the twelve (12) months ended the December before each rate adjustment, as compared to the twelve (12) months ended the prior December. The Bureau of Labor Statistics publishes these monthly indices.

The first example below is for the Consumer Price Index for All Urban Consumers all items less food and energy index - U.S. City average that is used to adjust the “all other” cost components. If, for example, a rate adjustment based on this CPI index were to be implemented as of July 1, 2014, the twelve-month average annual index for the period ended December 2013 of 233.806 would have been the “New Index Value” to be used in Column B of the example rate adjustment formula in Exhibit 3A, and the twelve-month average annual index for the period ended December 2012 of 229.755 would have been the “Old Index Value” in Column A. This would have resulted in a 1.8% increase to the “all other” cost components in Column C.

Consumer Price Index – All Urban Consumers, U.S. City Average

All items less food and energy, CUUR000SAOL1E, Not Seasonally Adjusted

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2012	227.237	227.865	228.735	229.303	229.602	229.879	229.893	230.196	230.78	231.276	231.263	231.033	229.755
2013	231.612	232.432	233.052	233.236	233.462	233.64	233.792	234.258	234.782	235.162	235.243	235.000	233.806
Average Annual Change:													1.8%

Below is an example of this calculation as applied to the fuel index:

Natural Gas (CNG) Information Reported by Clean Cities, West Coast

Year	January	April	July	October	Average
2012	\$2.38	\$2.22	\$2.24	\$2.41	\$2.31
2013	\$2.39	\$2.46	\$2.43	\$2.31	\$2.40
Average Annual Change:					3.9%

EXHIBIT 3

CONTRACTOR'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____, a California _____, as PRINCIPAL, and _____
_____, a Corporation organized and doing business by virtue of the laws
of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming
sole surety upon bonds or undertakings required or authorized by the laws of the State of
California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal
sum of _____ (\$_____) lawful money of the United States, for the payment
of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each
of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by
these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "INTEGRATED
SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit:
Collect, Process and dispose of Solid Waste generated within City, in accordance with the
contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be
performed each and all of the requirements and obligations of said contract to be performed by
said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it
will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension
of time, alteration or addition to the terms of the contract or to the work to be performed there
under or the specifications accompanying the same shall in any wise affect its obligations on this
BOND, and it does hereby waive notice of any such change, extension of time, alteration or
addition to the terms of the contract or to the work or to the specifications.

In the event suit is brought by OBLIGEE to enforce the provisions of this bond, said Surety will
pay to OBLIGEE a reasonable attorney's fee, plus costs of suit, in an amount to be fixed by the
court.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ day of _____, 2018.

a California Corporation

SURETY

By: _____
(PRINCIPAL)

By: _____
(ATTORNEY IN FACT)

(SEAL)

(SEAL)

EXHIBIT 4

NOTARY CERTIFICATION

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____ before me, _____
Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public