SERVICE AGREEMENT

BETWEEN

THE CITY OF LA CANADA FLINTRIDGE
AND
CONTRACTOR

FOR

COMMERCIAL SOLID WASTE AND RECYCLABLES

AND / OR
C&D DEBRIS

COLLECTION, DISPOSAL AND PROCESSING

RECEIVED
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CITY OF
LA CAÑADA FLINTRIDGE
PUBLIC WORKS DEPARTMENT

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This Agreement is made and entered into by and between the City of La Canada Flintridge (the "**City**") and the Contractor named on the execution page of this Agreement (together, the "**Parties**"), as of the Commencement Date.

RECITALS:

The City is responsible for protection of public health and the environment. The City is not only authorized but required to provide solid waste handling services to its citizens under the provisions of the California Integrated Waste Management Act (the "**Act**" or "**AB 939**"), which is set forth in the California Public Resources Code at Section 40000, *et seq.*, including source reduction, recycling, composting activities and the collection, transfer and disposal of solid waste within the City boundaries subject to solid waste handling jurisdiction, as provided in Section 40057 of the Act. Pursuant to the provisions of this Agreement, City meets its obligations in part by requiring Contractor to provide collection, recycling, processing and disposal of solid waste materials in accordance with the Act.

The City is also responsible for complying with AB 939 diversion. The State of California (the "**State**") has found and declared that the amount of solid waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from land filling, have created an urgent need for State and local agencies to enact and implement an aggressive new integrated waste management program. Through enactment of the Act the State has directed the City to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of by land disposal; and the City is required to divert at least 25% solid waste from landfills by 1995, and 50% by 2000 and thereafter.

The California Integrated Waste Management Board conducted a Biennial Review of the City's Source Reduction and Recycling Element and after public hearing, found several deficiencies. It issued a compliance order that became final and effective on October 10, 1999, including a schedule of compliance with actions that the City must implement, such as:

(1) working with the Board's Office of Local Assistance to determine gaps in the City's program areas and make recommendations in improving, expanding or implementing new diversion programs, and

(2) documenting the City's progress in implementing selected programs and meeting diversion requirements in reports to the Board.

Pursuant to the provisions of this Agreement, City meets its obligations to the Board in part by requiring Contractor to provide commercial and industrial businesses that subscribe to Contractor's service in the City with carts or bins for collection of businesses' recyclables, and to recycle, process

and market a minimum of 26% of recyclables and 70% construction and demolition debris in a manner that qualifies for City disposal diversion credit under AB 939 in order to increase waste diversion and improve the quality of service.

The City is liable for its municipal solid waste. The City, not any waste hauler, is liable to the State under the Act for any fines up to $10,000 levied for noncompliance with AB 939. Municipalities like the City have also generally been held liable under federal Superfund laws for costs of cleaning up of hazardous waste sites that accepted municipal solid waste generated within municipalities' jurisdictions. Therefor the City is prudent to provide for terms and conditions of its municipal solid waste recycling, processing and disposal in accordance with this Agreement, including the right to designate processing and disposal facilities.

The City offers commercial businesses their choice of hauler. In order to provide City businesses with choice of solid waste hauler, the City has historically provided municipal solid waste collection services for its commercial businesses through non-exclusive, City-wide licenses. Historically, a number of haulers have been licensed and the City Code does not and will not limit the number of qualified licensees. The City intends that this Agreement will continue businesses' ability to choose their haulers.

By entering into this Agreement, the City establishes performance standards, customers' rights and program enforcement flexibility. This Agreement helps the City achieve the following goals:

(1) establishing performance standards, such as the Minimum Diversion Requirement, to help assure that the City meets its obligations under law (including AB 939) and protects and preserves the health and safety of its commercial businesses;

(2) enumerating and assuring customers' rights, such as the ability to discontinue service and switch service providers;

(3) substituting the unexpired term of this agreement for the 5-year period during which a solid waste service provider, like Contractor, would have the right to provide handling services in the City in accordance with Section 49520 of the Act, thereby giving the City greater flexibility in planning and implementing municipal solid waste management programs and compliance with diversion provisions of the Act; and

(4) providing City greater flexibility, less costs and shorter time to enforce provisions, such as those relating to public health and safety, through contractual remedies (including liquidated and compensatory damages) rather than Code enforcement.

This Agreement complements the residential collection agreements. Prior to entering into this Agreement, the City entered into similar agreements for residential solid waste, recyclables and green waste collection, disposal, processing and composting, which also contain recycling and diversion

programs and performance standards to help the City meet its diversion mandates under AB 939. Together, those residential agreements and this Agreement are a critical part of the City's diversion compliance program.

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

ARTICLE 1. DEFINITIONS AND CONTRACT INTERPRETATION

1.01 Definitions. In this Agreement capitalized words have the meanings defined in Exhibit 1.01, which control in the event of any conflict with the definitions used in the recitals above. Any words not otherwise defined in this Agreement but defined in the City Code have the meaning defined in the City Code.

1.02 Interpretation.

a. Gender and Plurality. Words of the masculine gender include correlative words of the feminine and neuter genders, and vice versa. Words importing the singular number mean and include the plural number, and vice versa, unless the context demands otherwise.

b. Headings, Font. Any captions or headings following the Exhibit, Section, subsection, paragraph and Article numbers and preceding the operative text of this Agreement is for convenience of reference only and shall not in any way control or affect the scope, intent, meaning, construction, interpretation or effect of this Agreement. Any underlined, italicized, bold-faced, upper captioned or other font style are for ease of reading and contract administration only and do not in any way imply relative importance or unimportance of any provision of this Agreement.

c. "Including", "include" and variations thereof mean "including, without limitation", "including, but not limited to" and "including, at a minimum".

d. "Prompt", "prompt" and variations thereof mean as soon as possible, but not less than 2 days, unless otherwise specified.

e. "Day" or **"days"** means calendar day or days.

f. "Herein", "hereof", "hereunder" and the like mean "in this Agreement", "of this Agreement",

"under this Agreement", etc.; "hereinbefore" and "hereinafter" mean before and after the date of this Agreement, respectively.

g. References to Parts. References to Sections and Articles refer to Sections and Articles of this Agreement, unless specified otherwise. References to Exhibits refer to Exhibits attached hereto.

h. Examples. Examples are for purpose of illustration only. If any example is ambiguous or conflicts with the text that it illustrates, the text governs.

i. Specifics no limitation on generalities. The mention of any specific duty or liability imposed upon the Contractor may not be construed as a limitation or restriction of any general liability or duty imposed upon the Contractor by this Agreement or Applicable Law.

j. Ambiguities, Inconsistencies and Conflicts. If any provisions contained in the text of Articles 1 through 20 and in any Exhibits to this Agreement are ambiguous, inconsistent or conflict, the provisions of the text will govern.

1.03 Integration. This Agreement contains the entire agreement between the Parties with respect to the rights and responsibilities of the Parties under this Agreement ("**Commercial Collection Rights and Responsibilities**"), including collection of Commercial Refuse, Recyclables and Roll-off Containers, the enforcement and administration of this Agreement. This Agreement completely and fully supersedes all prior understandings and agreements between the Parties with respect to Commercial Collection Rights and Responsibilities, including those contained in memorandums, correspondence, telephone calls, field trips and City Council sessions.

1.04 Governing Law. This Agreement is governed by, and construed and enforced in accordance with, the Applicable Law of the State of California, without giving effect to the State's principles of conflicts of laws.

1.05 Severability. If any clause, sentence, provision, subsection, Section or Article of this Agreement or Exhibit to this Agreement (an "**Agreement Provision**") is ruled unconstitutional, illegal, invalid, non-binding or unenforceable by any court of competent jurisdiction, then the Parties will:

(1) promptly meet and negotiate a substitute for the Agreement Provision and any related amendments, deletions or additions to other provisions of this Agreement which together effect the

Parties' original intent to the greatest extent allowable under Applicable Law; and

(2) if necessary or desirable to accomplish preceding item (1) , apply to the court that declared the invalidity for a judicial construction of the substituted Agreement Provision and any amendments, deletions or additions to this Agreement. Within 10 days of City's request, Contractor will pay City an amount equal to (i) ½ the Direct Costs of the application, divided by (ii) the number of permits for Collection of Commercial Refuse and C&D Debris then issued and in effect in the City.

The unconstitutionality, illegality, invalidity, non-binding nature or unenforceability of any Agreement Provision will not affect any of the remaining provisions of this Agreement. This Agreement will be construed and enforced as if the Agreement Provision did not exist.

However, if any Agreement Provision with respect to:

(i) City direction of any Solid Waste Management Facility; or

(ii) the power or authority of City to issue permits with respect to Commercial Solid Waste or C&D Debris and enter into this Agreement,

is ruled unconstitutional, illegal, invalid, non-binding or unenforceable by any court of competent jurisdiction, then the City may in its sole discretion either (x) sever that Agreement Provision and construe and enforce this Agreement in accordance with this Section, or (y) sever that Agreement Provision and, unless Contractor is complying with that Agreement Provision in actual practice, terminate this Agreement in accordance with Section 15.01a(3), or (z) accept that ruling without severing that Agreement Provision.

1.06 Interpretation. This Agreement must be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting. Contractor acknowledges that it determined to provide Services in the City and execute this Agreement upon its own choice and initiative. Each Party represents and warrants that it has reviewed and commented upon this Agreement with advice of their respective attorneys, and agree that no provision herein is construed against the City solely because it prepared this Agreement in its executed form.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.01 Of Contractor. The Contractor represents and warrants as of the date it executes this Agreement, in accordance with Exhibit 2.01.

2.02 Of City. The City represents and warrants as of the date it executes this Agreement, in accordance with Exhibit 2.02.

ARTICLE 3. TERM OF AGREEMENT

3.01 Term. The Term commences upon execution of this Agreement by both Parties (the "**Commencement Date**"). The Term expires on November 30, 2006 *unless* terminated earlier in accordance with Article 15, including termination in accordance with Section 15.01a if Contractor does not timely submit documentation listed in Exhibit 3.01a ("**Term Conditions**") within 30 days following execution of the Agreement by Contractor, in form satisfactory to City Representative, evidenced by dated acknowledgment of City Representative.

3.02 Survival of Certain Provisions.

(1) All representations and warranties of the Parties herein,

(2) all Indemnifications,

(3) all amounts due and payable, and

(4) any other rights and obligations of the Parties accrued prior to expiration or termination of this Agreement or expressly stated to survive the expiration or termination of this Agreement,

will survive expiration or termination of the Agreement.

3.03 Term Conditions - Amendments

a. Contractor Amendment with City Consent. If with City consent Contractor may amend a Term Condition, Contractor will make any amendments in accordance with this subsection. Upon Notice from Contractor Representative to City Representative and if City consents to the amendment,

the Parties will respectively substitute the amended form. The dated signature of each Party Representative on that amended form will be deemed evidence that due Notice was given and that City consented, and that the new attachment supercedes the prior attachment as of the last signature date of a Party Representative. Instances of Contractor amendment with City consent include Sections 4.01e (form of Customer Service Subscription Order) and Section 4.05b (complaint resolution protocol).

b. Contractor Amendment upon Notice to City. If upon Notice to City Contractor may amend a Term Condition, Contractor will make any amendments in accordance with this subsection. Upon Notice from Contractor Representative to City Representative, the Parties will respectively substitute the amended form. The dated signature of each Party Representative on that amended form will be deemed evidence that due Notice was given and that the new attachment supercedes the prior attachment as of the last signature date of a Party Representative, although Contractor may also establish that due Notice was given by providing evidence of delivery described in Section 19.01. Instances of Contractor amendment upon Notice to City include Sections 5.06b (hazardous waste screening protocol), 6.01 (identification of Recyclables Processing Facility and C&D Debris Processing Facility), 7.01 (identification of Refuse Disposal Facility and C&D Debris Disposal Facility) and 17.07 (designation of Contractor Representative).

c. City Amendment upon Notice to Contractor. If City upon Notice to Contractor City may amend a Term Condition, City will make any amendments in accordance with this subsection. Upon Notice from City Representative to Contractor Representative, the Parties will respectively substitute the amended form. The dated signature of each Party Representative on that amended form will be deemed evidence that due Notice was given and that the new attachment supercedes the prior attachment as of the last signature date of a Party Representative although City may also establish that due Notice was given by providing evidence of delivery described in Section 19.01. An instance of City amendment upon Notice to Contractor includes Section 17.01 (designation of City Representative).

ARTICLE 4. CUSTOMER COLLECTION SERVICES

4.01 Scope of Basic Collection Services.

a. Collection Service Obligations

(1) Refuse Collection upon Customer request. Within one week of any Person's request for Refuse

collection service at a Commercial premise in the City, Contractor will Collect that Refuse set out in any number and capacity of Bins provided by Contractor at the location agreed to by Contractor and that Person, as indicated on the Customer Service Subscription Order.

(2) Recyclables Carts and Collection. At the same place that Contractor Collects Refuse or other place indicated on the Customer Service Subscription Order, beginning no later than February 1, 2002 Contractor will Collect Recyclables set out in up to 2 Carts of 90-96 gallon capacity or a 3-yard Bin provided by Contractor, at no additional itemized charge to Customer. Contractor will provide additional number and capacity of Bins or Carts requested Customer, as indicated on the Customer Service Subscription Order, for the additional nominal charges indicated on the Customer Service Subscription Order. Contractor may provide for single-stream Collection of Recyclables, including mixed office paper, cardboard and fiber board and domestics such as glass/plastic bottles ad cans and steel/aluminum cans.

Contractor acknowledges that timely, efficient and orderly transition to Recyclables Collection Services is of the utmost importance to City. Contractor will timely acquire Carts and deliver Carts to Customer on or before February 1, 2002, and direct employees to work overtime and/or add extra shifts, as necessary, at Contractor's sole cost, to meet that delivery date. Contractor will submit written status reports to the City on a weekly basis, commencing no later than the Friday of the week following execution of this Agreement, and promptly upon City direction, meet with the City to review implementation progress.

b. Collection Frequency

(1) Regular Schedule. Contractor will Collect Refuse and Recyclables at least weekly or more frequently as agreed to between Contractor and the Customer indicated on the Customer Service Subscription Order.

(2) Holiday Schedule. Contractor will provide Refuse and Recyclables Collection Services scheduled for a Holiday on the day immediately following the Holiday and provide affected Customers advance written notice of that change in affected Customer's Collection Services bill immediately preceding the Holiday.

(3) Changed Schedule. Contractor will provide Customers with advance written notice of any change in day of Collection in Customer's Collection Services bill immediately preceding that change.

c. Collection Hours. Contractor will Collect Refuse and Recyclables only between 6:00 a.m. and 8:00 p.m., as required by Section 9.12.050D of the City Code, Monday through Saturday. Contractor will not Collect Refuse and Recyclables on Sunday, except upon City direction in events

of emergency.

d. Containers Services

(1) Delivery. On the day Contractor and Customer agree when Customer requests Services, Contractor will deliver Containers at the location agreed to by Contractor and that Customer, as indicated on the Customer Service Subscription Order. Contractor will deliver at least one Recyclables Cart or Bin described in subsection a(2), and will provide Customer written notification in the Customer Service Subscription Order and at least annually thereafter, that Contractor will deliver a second Cart without additional charge upon Customer request. However, if Contractor's Vehicle driver reports, and Contractor's Customer service representatives enter into Customer's account records that Customer does not set out a second Cart more than once a month, Contractor may pick up the unused or under-utilized Cart.

(2) Pick up. No more than 30 days after a Customer notifies Contractor by written or oral communication that it wants to terminate service in accordance with the Customer Service Subscription Order, Contractor will pickup and remove that Customer's Containers left where Customer places Containers for Collection, without charge.

(3) Exchange. Customers may exchange Containers for different sizes and add extra Containers or reduce the number of their Containers, as agreed to with Contractor. Contractor will exchange, deliver and/or remove Containers left where Customer places Containers for Collection, without charge in accordance with Customer's request within 2 weeks following receipt of Customer's request.

(4) Replacement. Contractor will repair or replace damaged Containers within 72 hours of a request for repair or replacement from a Customer or, if the repair cannot be completed within 72 hours, will provide that Customer with a replacement Container without charge.

e. Form of subscription order. Before commencing Collection Contractor will provide all Customers with a written Customer Service Subscription Order in the form attached to Exhibit 3.01a as a Term Condition, including the Customers' "bill of rights" described in Section 4.10 and the provisions described in subsection f. The form may contain a wavier of damage liability and/or indemnification in connection with subscribing for Services on private driveways or pavement. Contractor may amend the form following City consent in accordance with Section 3.03a.

f. Termination of Service. The term of a Customer Service Subscription Order may be up to 3 years, but no longer than the remaining Term or be subject to termination at end of the Term if Contractor no longer provides collection services in the City. Contractor must offer Customers the

option to terminate their Service Subscription Orders entered into after the Commencement Date on 30 days written notice without Contractor Fault defined below, at a specified price. However Contractor may also offer Customers the option to terminate Service Subscription Orders only for Contractor Fault, at a different price. Customer Service Subscription Orders must give Customer's the right to terminate service within 30 days if (1) Contractor fails to provide Services in accordance with the terms of this Agreement (including missed collections, failure to timely repair or replace containers, or failure to provide Recyclables Collection) or the Customer Subscription Order, or (2) bills Customer for amounts not provided in the Customer Service Subscription Order (clauses (1) and (2) are together referred to in this paragraph as "Contractor Fault"). Customer Service Subscription Orders may not include any automatic renewals, such as those colloquially referred to as "evergreen" clauses, and may not require Customer to take actions to prevent extension or renewal.

4.02 0Roll-off Service. Within one week of any Person's request for C&D Debris Collection Service at a premise in the City, Contractor will deliver a Roll-off Container to the location agreed to by Contractor and that Person, and at the price, indicated on the Customer Service Subscription Order. Contractor will pick up that Roll-off Container within one week of that Person's direction, but will not charge that Person for additional rental beginning on the day following that pick-up.

4.03 Service Standards.

a. General. Contractor will perform all Services in a prompt, thorough, comprehensive, reliable, courteous and professional manner so that Customers receive high-quality Service at all times. Contractor must perform Services regardless of weather conditions and regardless of difficulty of collection, subject to the exceptions set forth in Section 4.04. Enumeration of and specifications of requirements for particular aspects of Services quality do not relieve Contractor of its duty and obligation to accomplish all other aspects of Services in the manner provided in this paragraph, whether or not those other aspects are enumerated elsewhere in this Agreement.

b. Litter. Contractor will clean up litter caused by Contractor's employees in the immediate vicinity of any Solid Waste storage area, including the areas where Containers are placed for collection. Contractor will ensure that each Vehicle carries a broom and shovel at all times for this purpose. Contractor will discuss instances of repeated litter not caused by it directly with the Customer responsible therefor and report those instances to City. Contractor may request City to help Contractor rectify the situation if Contractor has already attempted to do so without success.

Contractor will also use due care to prevent Solid Waste from being spilled or scattered during Collection and transportation. Contractor will immediately clean up any Solid Waste that it spills or

scatters, including Solid Waste tracked onto any alley, street or public place by Vehicles. If Contractor fails to clean up the Solid Waste by 8:00 p.m. on the day City gives Contractor notice of a spill, the City may clean up or cause to be cleaned up spilled or scattered Solid Waste and Contractor will reimburse City for City's Reimbursement Costs thereof. Contractor is responsible for paying any fines for improperly covering loads assessed by the operator of any Solid Waste Management Facility or any other Person.

c. Respect for Property.

(1) Private Property. Contractor will use due care in entering and exiting Customers' property or enclosures and use paved walks or surfaces where practicable. It will not trespass or loiter on Customers' property. It will not handle or meddle with private property without permission. Within 2 weeks of receiving notice of any damage to Customer's property by phone or other medium, Contractor will reimburse Customer his or her Direct Costs of repair or replacement of property damaged as a result of the inattention, carelessness or negligence of Contractor's employees, all in accordance with Section 13.05. However, the Customer Service Subscription Order may include a wavier of damage liability and/or indemnification if Customer specifically directs Contractor to drive on private driveways or pavement in the course of providing Collection Service.

If Contractor denies that the property was damaged as a result of the inattention, carelessness or negligence of Contractor's employees, Customer may request the City Representative to determine whether Contractor is obligated to reimburse Customer his or her Direct Costs. The determination of the City Representative will be final, and the City Representative may recover the City's Reimbursement Costs for making that determination from either the Customer, the Contractor or both the Customer and Contractor, as the City Representative specifies.

(2) Containers. Contractor will use Reasonable Business Efforts to provide Containers that are water tight and leak proof, and will promptly repair or replace observed or reported instances of leaky Containers. Contractor will handle Containers with due care, as required by Section 9.12.050 of the City Code. Contractor will return Containers to within 5 feet of the location from which they were picked up by Contractor's employees, upright, as required by Section 9.12.100 of the City Code, without obstructing any passable driveway, sidewalk or street. Contractor will not leave Container lids in the roadway, as required by Section 9.12.110 of the City Code.

(3) Pavement and Utilities. Contractor is responsible for damage to driving surfaces where Containers are located on public or private property, other than ordinary wear and tear, when City or Customer can demonstrate to satisfaction of City following Notice to Contractor and offer to Contractor to discuss alleged damages, Contractor responsibility and Customer proof, that the damages are the result of Vehicles exceeding the legal maximum weight limits of the State or

Contractor's negligent operation of Vehicles.

Contractor is responsible for damage to public and private utilities, whether located on public streets or property or private property, when City or Customer can demonstrate to satisfaction of City following Notice to Contractor and offer to Contractor to discuss alleged damages, Contractor responsibility and Customer proof, that the damages are the result of the inattention, carelessness or negligence of Contractor. City or Customer, as the case may be, may direct Contractor to promptly repair or replace the damaged pavement or utilities to satisfaction of Customer or City, as the case may be, or repair and replace them itself or through a third party. In that event, Contractor will reimburse Customer his or her Direct Costs of repair or replacement and City its City's Reimbursement Costs of repair or replacement, as the case may be.

d. Missed Pickups and Other Complaints. Contractor will provide a special pickup or other corrective action acceptable to Customer within 24 hours (Sundays and Holidays excepted) of telephonic or other notice to Contractor of a missed scheduled pickup or other complaint and related Service breaches under this Agreement at no surcharge to Customer or City. If Contractor does not timely provide the special pick up or other corrective action, City may provide for the pickup or corrective action itself or through a third party and Contractor will reimburse City the City's Reimbursement Costs thereof.

4.04 Service Exceptions.

a. Recyclable Materials not Discarded by Customer. Contractor will not Collect Recyclables not discarded by Customers. Nothing herein is construed as requiring Customers to set out Recyclables for Collection by Contractor. Customers may donate, sell or otherwise divest themselves of their Recyclables through manners other than Collection, including subscribing to a Recyclables collection service, taking Recyclables to drop-off facilities and donating or selling Recyclables to private or public entities, all as further provided in Section 9.12.100 of the City Code.

b. Waste Not Properly Placed in Containers. Contractor is not required to Collect any Solid Waste that is not placed inside a Container.

c. Carts in Excess of Weight Limits. Contractor is not required to Collect Carts weighing more than 150 pounds. Contractor will first notify Customer that Customer must remove Solid Waste to reduce the weight thereof to legal limits or Contractor will remove the Solid Waste and charge Customer a disclosed, specified fee.

d. Unsafe Condition. If Contractor determines that any condition at or near any collection location

presents a health or safety threat to Contractor's employees, Contractor will immediately notify the Customer thereof. Upon City authorization, the Contractor may discontinue collection for that location until the safety hazard is eliminated. Contractor will complete and leave a Non-Collection Notice securely attached to Customer's Container or on the door to Customer's premises.

e. Hazardous Waste or Unsafe Materials. If Contractor determines that Containers contain Hazardous Waste (other than Household Hazardous Waste not discovered and identified by Contractor acting in accordance with its Hazardous Waste Screening Protocol) or other materials that presents a health or safety threat to Contractor's employees, Contractor may refuse to Collect that container or Container. Contractor will attempt to personally provide the Customer whose container or Container contains Hazardous Waste or other material with written information about the proper disposal of Hazardous Waste. If Contractor cannot personally provide Customer with that information, prior to leaving Customer's premises it will leave that information, together with a Non-Collection Notice, securely attached to the container or Container. If the waste could possibly result in imminent danger to persons or property, Contractor will follow the procedures outlined in its Hazardous Waste Screening Protocol. If no imminent danger exists, Contractor will notify City thereof in its Monthly Report.

4.05 Customer Service. Contractor acknowledges that City determined to procure and enter into this Agreement with Contractor in part in order to provide high quality Customer service, relations and satisfaction. Contractor further acknowledges that Customers' contact with Contractor's employees by telephone is critical in establishing and maintaining good Customer service, relations and satisfaction.

a. Phone Access

(1) Toll-free Number. Contractor will maintain a local telephone number, toll-free to Customers, answered by a live person at least between 8:00 a.m. and 5:00 p.m., Monday through Friday, excepting Holidays, and, if Contractor provides Services on Saturday, from 8:00 a.m. to noon on Saturdays ("**Phone Hours**"). Contractor will list the telephone number under Contractor's name in the City telephone directories (white pages and yellow pages), all as further required by Section 9.12.030E of the City Code. Contractor will provide an answering machine or answering service to take reports of missed pick-ups and other complaints that are received outside of Phone Hours and schedule timely special pickups or take other correction action in accordance with Section 4.03d. Contractor will mail to each of its Customers at least once each Contract Year a notice specifying that local telephone number, as required by Section 9.12.050 of the City Code.

(2) Emergency Number. Contractor will also maintain a local emergency telephone number disclosed to the City Representative and his or her designees for use outside Phone Hours.

Contractor will have a representative available at the emergency number outside Phone Hours who will return any emergency call as soon as possible, and not less than one hour.

b. Complaints.

(1) Records. Contractor will maintain a daily written record of every inquiry and complaint received by Contractor as required by Section 9.12.030E of the City Code, including:

(i) date and time of inquiry or complaint,

(ii) inquirer's or complainant's name and address if the complainant is willing to give this information,

(iii) nature of the inquiry or complaint,

(iv) date of action and description of action taken pursuant thereto or the reason for inaction, and resolution of complaint.

In addition to City rights provided in Section 9.12.030E of the City Code, Contractor will ensure that City can access those records at an office of the Contractor in Los Angeles County, during Phone Hours.

Contractor must input and enter any calls received via Contractor's answering service no later than the following day (other than Sunday and Holidays).

(2) Resolution. Contractor will handle complaints substantially in accordance with the dated complaint protocol attached to Exhibit 3.01a as a Term Condition. Contractor may amend that protocol upon City consent in accordance with Section 3.03a.

c. Reimbursement of City Cost. If City employees or agents spend more than 5 hours resolving any Customer complaint, or more than 2 hours in any work week (Monday through Friday), Contractor will reimburse City its City's Reimbursement Costs thereof incurred by City in connection therewith, as evidenced by an invoice indicating the name and address of the Customer, nature of complaint, amount of time spent, hourly fees for employees involved and materials or other disbursements, including phone and postage costs, required to resolve the complaint.

4.06 Program Implementation and Public Awareness

a. Introducing New Services. Contractor acknowledges that it is of the utmost importance to City

that the transition from services provided prior to entering into this Agreement to Services provided under this Agreement, including Reyclables Collection, will proceed smoothly to the satisfaction of Customers. In coordination with the City, Contractor will use its best efforts to ensure that Customers are timely informed about new Service programs implemented by Contractor, including types and use of Containers, Service options, Recyclables collected, collection frequency, scheduling and Customer Service telephone numbers.

b. Quarterly Distribution of Materials. The City Manager may direct Contractor up to 4 times each calendar year to provide a public awareness program for customers approved by the City Manager. including literature an other information designed to promote public participation and awareness of the need for and benefits of Solid Waste management programs and of the availability of Services provided by Contractor, as further provided in Section 9.12.050G of the City Code. Contractor will professionally print those materials on paper stock meeting the recycled materials requirements of Section 8.07. Contractor will provide camera-ready copy to City for City's review and approval at least 14 days prior to printing thereof.

Contractor may develop other promotional materials or news releases to promote Contractor's Service program, but Contractor will obtain City's approval of any materials prior to printing or distributing the materials.

4.07 Customers' Privacy. Contractor will strictly observe and protect Customers' rights of privacy. Information identifying individual Customers or the composition or contents of a Customer's waste stream will not be revealed to any Person unless upon the authority of a court of law, by Applicable Law or by valid authorization of the Customer. This provision will 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 the City or Applicable Law. In addition, Contractor will not market, sell, convey, or donate to any Person any list with the name or address of Customers *except* that Contractor may provide those lists to Persons authorized by the City. The rights accorded Customers pursuant to this Section is in addition to any other privacy right accorded Customers pursuant to Applicable Law.

4.08 No Discrimination. Contractor will not discriminate against Customers entitled to Service under this Agreement on the basis of race, color, national origin, ancestry, religion, creed, physical handicap, medical condition, marital status or sexual orientation, as otherwise prohibited by and in accordance with Applicable Law.

4.09 Contractor Billing

a. Schedule. Contractor will calculate and present each Customer's bill monthly in advance, no sooner than the first day of the month, based on Service to be provided to the Customer in accordance with the Rates. Bills must be payable to the order only of Contractor, and no other Person, including Affiliates of Contractor, no sooner than the last day of the month after presentation, and delinquent no sooner than two weeks after payment is due ("**Delinquent**") upon prior notice to Customer. Notice of delinquency must be made by certified mail, return receipt, and include a description of the actions Contractor and City may take to collect delinquent Rates, including placing a lien on Customer's property for delinquent Rates in accordance with California Health & Safety Code Section 5470 *et seq.*; compensation for the levy, collection and enforcement of the charges in accordance with California Health & Safety Code 5473.9 and penalty in accordance with Health & Safety Code 5473.10.

Contractor will refund to Customer overcharges (including charges in excess of Services and reimbursement of advance payments for Services that are subsequently canceled) within 30 days following collection thereof with interest thereon at 10% per annum from the date originally overcharged until the date refunded. City will not be held liable for any under billings to Customers or delinquent payments thereof, except from Service Fees.

b. Format. Contractor will distribute bills in the format attached to Exhibit 3.01a as a Term Condition. Each month Contractor will send City a sample copy of the bill, including inserts or announcements, at the same time it mails that bill to Customers. Each bill will include Contractor's Phone Hours and toll-free number; and when bills become delinquent if not paid.

c. Disputes. Contractor acknowledges that City will neither be responsible for taking Customers' calls or responding to Customers' correspondence with respect to disputes regarding billing or otherwise, nor for resolving disputes. Contractor will handle billing disputes with Customers in accordance with the written procedure attached to Exhibit 3.01a as a Term Condition. Contractor may amend that procedure upon City consent.

d. Records. Contractor will maintain billing records in accordance with Section 10.01.

4.10 Customers' Bill of Rights. Before commencing Services Contractor will provide all Customers with Customer Service Subscription Order, including a description of the following Customers' rights under the Agreement, as City may amend from time to time following dated Notice to Contractor:

(1) the scope of Services provided in accordance with Sections 4.01a or 4.02, including size and number of Containers plus the subscription date and placement of Containers;

(2) Rates, which Contractor may present in the form of a general fee schedule clearly marked to indicate which fees are specifically applicable to Customer;

(3) billing procedures in accordance with Section 4.09 (including payment due and delinquency dates, Contractor's right to terminate Services for Delinquent payments, and Customer's refund rights upon Customer's termination of Services);

(4) Holiday schedules and notices of Holiday schedules in accordance with Section 4.01b;

(5) delivery, pickup and exchange of Containers in accordance with Section 4.01d;

(6) Customers' privacy rights in accordance with Section 4.07;

(7) non-discrimination in accordance with Section 4.08;

(8) term of the subscription and Customer's termination rights, in accordance with Section 4.01f;

(9) Phone Hours and toll-free Customer service phone number, and

(10) any other provisions of this Agreement or of the City Code that City directs.

ARTICLE 5 OPERATIONS

5.01 Routing. Within 7 days of City direction, Contractor will provide to the City Collection Service route sheets showing Contractor's Refuse and Recyclables Collection routes and names and addresses of accounts, levels of Service and date and approximate time (morning or afternoon) of pickup. Contractor will revise Refuse and Recyclables Collection routes in accordance with any schedules established after the Commencement Date by the City as authorized by Section 9.12.020E of the City Code.

5.02 Vehicles and Drivers

a. Vehicle Compliance with Applicable Law

(1) Air Emissions. Contractor will procure and maintain Vehicles that comply with Applicable Law,

including with respect to air emissions such as compliance (smog check) issued pursuant to Part 5 of Division 26 of the California Health and Safety Code (Section 43000 *et seq.*).

(2) Tires. Vehicle tires must conform with Applicable Law, including Section 27456b of the California Vehicle Code.

(3) Noise. The noise level generated by Vehicles using compaction mechanisms during the stationary compaction process will not exceed 75 decibels at a distance of 25 feet from the Collection Vehicle measured at an elevation of 5 feet above ground level using the "A" scale of a standard sound level meter at slow response, or Applicable Law, whichever is more stringent. Upon City request following Customer complaint, no more than once annually Contractor will cause the Vehicles to be tested by a Person certified by the Board of Certified Safety Professionals (who may be an employee of the Contractor) and will submit together with the Annual Report a printout of testing results showing that the Vehicles meet the requirements of this subsection. The City may conduct random checks of noise emission levels to ensure compliance with this subsection.

(4) Registration. Contractor will register all Vehicles, except those Vehicles used solely on Contractor's premises, with the California Department of Motor Vehicles in accordance with Applicable Law.

(5) Safety. Contractor will document through its maintenance log or otherwise a safety compliance report issued pursuant to Division 14.8 of the California Vehicle Code (Section 34500 *et seq.*) as applicable to each Vehicle, and will provide City with copies of inspection reports promptly upon City direction.

(6) Vehicle Safety Markings. Contractor will ensure that all Service Assets bear all necessary and appropriate safety features, including highway lighting, flashing and warning lights, clearance lights, and warning flags, in accordance with the requirements of the California Vehicle Code and other Applicable Law.

b. Certifications. Contractor will maintain copies of registration certificates and reports and make them available for inspection at an office of Contractor located in Los Angeles County during Phone Hours upon request by the City.

c. Vehicle Identification. Contractor will ensure that its name, telephone number and the Vehicle number is painted on all Vehicles in letters and figures not less than 2 inches high in letters of contrasting color, indicating the Vehicles are owned and operated by Contractor. No other signs or markings is placed on Vehicles or other collection Service Assets without City approval, including use of the City name or logo, *except* for safety markings, public relations signs approved by the City,

or instructions regarding filling or placement of Containers. Contractor will clearly display its permit in the front window of every Vehicle as required by Section 9.12.020 of the City Code.

d. Vehicle Maintenance. Contractor will at all times maintain Vehicles in good, clean condition and repair so that they operate properly and safely. Contractor will have each Vehicle inspected by the California Highway Patrol in accordance with Applicable Law and Section 9.12.090B of the City Code. In addition to bi-annual "BIT" inspections conducted by the California Highway Patrol, the City may conduct an annual inspection of Vehicles. City may also inspect Vehicles as provided in Section 9.12.090A of the City Code and may direct Contractor to have additional inspections necessary to insure adequate protection of public health, safety and welfare, in accordance with Section 9.12.090B of the City Code. Contractor acknowledges that it is important to the City that Contractor present a professional and pleasing image. Therefore, Contractor will wash and paint all Vehicles as necessary to preserve and maintain that image, or promptly upon City's Notice directing that washing or within 30 days of City's Notice directing that repainting. Contractor will maintain a maintenance log for all Vehicles.

Contractor will recycle all used oil from its Vehicle maintenance operations and make Reasonable Business Efforts to use re-refined oil.

Contractor will maintain in readiness at least one spare Vehicle, fully fueled and ready to dispatch and replace any Vehicle which breaks down on route within reasonable time of a break down. Customers on that route will not have to wait for Service while the disabled Vehicle is repaired. Contractor will assure that no hydraulic fluid or other liquid leaks from any Vehicle onto the pavement or that if a leak occurs, Contractor will immediately clean it up.

e. Driver. Contractor will ensure that all drivers of Vehicles have in full force and effect a valid license of the appropriate class issued by the California Department of Motor Vehicles. Contractor will provide suitable operational and safety training for all of its personnel, including those who drive Vehicles or operate other equipment for Collection, which training will include on-job-training by supervisors. Contractor will train its drivers to identify and not to collect Hazardous Waste. Contractor will implement drug and alcohol testing in accordance with Applicable Law. Contractor will maintain photostat copies of licenses for all Vehicle operators and full and complete records of training and testing, which Contractor will make available to City at an office of the Contractor in Los Angeles County during Phone Hours.

f. Field Supervisor. Contractor will provide one qualified personnel as on-site supervisor of field operations who is equipped with a vehicle and mobile telephone and is available by phone or radio or in the Contractor's office or maintenance yard, checking collection operations, coordinating improvements to Service, resolving field problems and responding to complaints of Customers in

person or by telephone. Drivers in Vehicles will also be equipped with a 2-way radio or cell phone.

5.03 Containers

a. Delivery. Contractor will deliver initial Containers for Recyclables during regularly scheduled Collection hours in accordance with Section 4.01c. An inventory of Carts for Recyclables, whether new or used, owned or leased, is attached to Exhibit 3.01a as a Term Condition. Contractor will update that inventory included in its Annual Report, or at any time promptly upon request of City.

b. Materials Identification and Decals. Recyclables Containers or their lids must be in bright, readily identifiable colors, or the Containers must be clearly labeled by decal, stencil or other means subject to City approval, in order to facilitate Customer's ready recognition of Recyclables discards. Contractor will provide and attach to all Recyclables Containers decals or emboss information, subject to City approval, displaying Contractor's name, telephone number and Container number and describing correct materials and methods for collection; forbidding disposal therein of Hazardous Waste and describing proper disposal thereof; and forbidding scavenging (through words and international symbols) and describing the penalties therefor under Section 41950(a) of the Act.

In conjunction with the distribution of any Recyclables Containers and/or decals, Contractor will provide Customers notice in English and Spanish that the sticker or other information is provided to help curb the illegal activity of scavenging, and that when recyclables are taken from Customer's trash, the City's recycling program is cheated out of expected revenue. The notice further will provide that Customer can help protect the refuse fee, personal papers and the neighborhood by applying and/or preserving the sticker prominently on the Container and reporting scavenging violations to a specified phone number.

c. Ownership. Contractor will wholly own Containers. On and after the Commencement Date, if Contractor will lease, finance, rent or purchase by installment or conditional sale Containers, Contractor will use Reasonable Business Efforts to ensure that the lease and other agreements allow the City use and possession of Containers in order to realize City's rights to use and possession under Section 14.09 and further allow the City right to sub-lease, assume or otherwise acquire Carts in order to realize the City's rights to purchase Recyclables Carts under Section 15.02a. Any document (**"Service Asset Document"**), including a lease, financing contract, acquisition over time, mortgage or other instrument establishing a security interest to or by the Contractor, that encumbers or limits the Contractor's interest in Containers, including any replacement or substitute equipment, will:

(1) allow the Guarantor to assume the Contractor's obligations and to continue use of Containers in performing Services;

(2) allow Contractor's surety to assume the Contractor's obligations and to continue use of Containers in performing Services during the remaining term of surety's bond; and

(3) allow the City to assume the Contractor's obligations and to continue use of Containers in performing Services.

5.04 Facilities. The City may enter Contractor's operation and maintenance facilities during Phone Hours upon 2 hours' prior telephone or facsimile notice, and investigate, observe, inspect and review Contractor's operations therein, as further provided in Section 9.12.090 of the City Code. Contractor will use Reasonable Business Efforts to secure for City the City's right to inspect any Solid Waste Management Facility not designated by City, as required by Section 9.12.090 of the City Code.

5.05 Personnel

a. Key Personnel. Contractor will use Reasonable Business Efforts to provide City Notice of change in the Contractor Representative, if possible, no later than 30 days prior thereto, including the professional qualifications of the person Contractor proposes to serve as the new Contractor Representative. During that 30 day Notice period City may direct Contractor to propose an alternative person or persons to serve as Contractor Representative. At any other time, City may direct Contractor to replace the Contractor Representative within 10 days of that direction.

b. Identification, Appearance, Conduct. Contractor will require its drivers and all other personnel who come into contact with the public to wear a uniform identifying the name of the driver or other personnel. Contractor will assure that all personnel present a profession, neat, tidy and orderly appearance, including buttoning their shirts, tucking their shirts into their trousers and tying their shoes and refraining from wearing flamboyant clothing.

Contractor will assure that all personnel conduct themselves in a courteous manner. Contractor will regularly train its employees in Customer courtesy, will prohibit the use of loud or profane language and will instruct Collection crews to perform their work as quietly as possible.

c. No Gratuities. Contractor will not permit its personnel to demand or solicit, directly or indirectly, any additional compensation or gratuity from Customers or any members of the public.

d. Nondiscrimination. Contractor will not discriminate against any of its personnel on the basis of the person's race, color, national origin, ancestry, religion, creed, physical handicap, medical

condition, marital status or sexual orientation. Contractor will comply with all Applicable Law regarding nondiscrimination, including those prohibiting discrimination in employment.

e. Compliance with Law. Contractor will keep all records indicating compliance required by the Federal Immigration and Control Act of 1986 and will make those records available for inspection by the City upon request. Receipt of a citation or failure-to-abate notice from the California Division of Occupational Safety and Health will constitute a breach under item (2) of Section 14.02, subject to cure as provided in that item.

5.06 Hazardous Waste Screening.

a. Driver Observation and Training. Contractor must screen all loads of Solid Waste for Hazardous Waste by causing its drivers to observe via mirrors automatic tipping of Containers into Vehicles at the point of Collection and at the point of discharge. Contractor will conduct on-going training of its drivers, mechanics, dispatchers and other support personnel in Hazardous Waste recognition and safety procedures. Contractor will document training as part of its Records.

b. Hazardous Waste Screening Protocol. Contractor will implement the Hazardous Waste screening, identification and prevention protocol attached to Exhibit 3.01a as a Term Condition (the "**Hazardous Waste Screening Protocol**"). Contractor may amend that protocol upon Notice to the City in accordance with Section 3.03b.

c. Inadvertent Delivery of Hazardous Waste. If Contractor inadvertently delivers Hazardous Waste to any Solid Waste Management Facility and Contractor cannot identify or fails to remove them, Contractor will arrange for its proper disposal in accordance with Applicable Law and/or cooperate with Solid Waste Management Facility owners or operators with respect thereto. Contractor will make a good faith, best effort to recover the costs of disposal from the Customer which generated the Hazardous Waste, if known, and charge them to that particular Customer.

ARTICLE 6 DIVERSION

6.01 Recyclables Processing Facility and C&D Debris Facility
a. Facility.

(1) Identified by Contractor. Contractor will transport and deliver Recyclables to the Recyclables Processing Facility, and any C&D Debris that can be diverted from Disposal to the C&D Debris

Processing Facility. Contractor may change that identification upon Notice to the City in accordance with Section 3.03b. Contractor will also attach information to Exhibit 3.01a relating to the Recyclables Processing Facility and C&D Debris Facility, including:

(i) name of their respective owner and operator;

(ii) address;

(iii) contact Person and telephone number; and

(iv) method of allocating process residue to Contractor and the City, which method is used to report Solid Waste disposal to the California Integrated Waste Management Board, and which will be certified by an authorized personnel or officer of the Facility owner or operator.

If Contractor enters into any contract, agreement, subscription order or other understanding with the Recyclables Processing Facility or C&D Debris Processing Facility, it will use Reasonable Business Efforts to provide that terms and conditions such as insurance requirements, indemnifications, and materials recovery and marketing performance guaranties can be enforced by the City as a third party beneficiary thereof.

(I) Contractor which Collects Recyclables warrants throughout the Term that the Recyclables Processing Facility, and

(II) Contractor which Collects C&D Debris warrants throughout the Term that the C&D Debris Processing Facility,

are authorized and permitted to accept Recyclables or C&D Debris, respectively, in accordance with Applicable Law and are in full compliance with Applicable Law.

(2) **City designated**. The City in its sole discretion may designate the Recyclables Processing Facility or C&D Debris Processing Facility upon 30 days Notice to the Contractor, including for reasons listed in Section 9.12.055D. City will make any designation in good faith in the best health, safety and fiscal interest of City commercial businesses, including furthering compliance with Applicable Law with respect to diversion, without intending to favor any other Person collecting solid waste in the City over the Contractor. Prior to City's designating a Recyclables Processing Facility or C&D Debris Processing Facility, City will meet with Contractor to discuss City's considerations in making that designation and Contractor's comments thereon. If Contractor has a legal, valid and binding commitment to deliver specified Recyclables or C&D Debris tonnage or to pay a specified fee for related tonnage, as evidenced to satisfaction of City, entered into by Contractor prior to the Commencement Date, City's designation will not become effective until the termination of that

commitment.

b. Weighing and Record Requirements. Contractor will ensure that, at a minimum, all materials are weighed upon delivery to the Recyclables Processing Facility and / or C&D Debris Facility and all weight and related delivery information (including date, time, material type, route and truck number, driver name and identification number) is recorded. If tipping is recorded on video cameras at any Recyclables Processing Facility or C&D Debris Facility, Contractor will make, or arrange with a Facility operator other than Contractor to make, the videos available for City review during Facility operating hours.

c. Compliance with rules and regulations. Contractor will observe and comply with all rules and regulations in effect at Solid Waste Management Facilities and cooperate with the operators of Solid Waste Management Facilities with respect to operations thereat, including directions to unload collection vehicles in designated areas, accommodating construction and maintenance, and hazardous waste exclusion programs. Contractor will at all times operate according to safe industry practices.

6.02 Diversion Defense and Indemnification.

a. Defense. Contractor will contribute up to a maximum of $10,000 of the Direct Costs of advice and counsel to or representation of the City by a Person (a "**Diversion Consultant**") selected by City in connection with any proceedings, actions or suits brought by the California Integrated Waste Management Board or State or federal courts to levy, assess or collect fines or penalties for failure to meet the diversion goals specified in California Public Resources Code Section 41780 as then in effect in the following events:

(1) Failure to divert: Contractor fails to meet its Minimum Diversion Guaranty; or

(2) Failure to report: Contractor fails to timely submit reports in accordance with Section 10.02 or to provide City promptly upon City request Records that contain information that must be included, directly or indirectly, in reports required to be timely submitted by City in accordance with the California Public Resources Code.

Prior to selecting the Diversion Consultant whose Direct Costs City will seek contribution from Contractor, City will offer to meet with Contractor to discuss the relationship, if any, among Contractor's failures, the City's potential fines or penalties, and the Contractor's potential liabilities to City under this Section.

Contractor's contribution obligation is limited to an allocable portion of costs equal to the ratio of:

(i) the amount of Solid Waste Collected by Contractor under this Agreement during the period for which the City failed to meet the diversion goals, determined as provided in Section 6.03d, to

(ii) the total amount of Solid Waste generated in the City and collected in the City by other Persons permitted by City.

This allocable portion is referred to as "**Allocable Fault**".

b. Indemnification. Contractor agrees to indemnify and hold harmless City from and against all fines or penalties imposed by the California Integrated Waste Management Board if the diversion goals specified in California Public Resources Code Section 41780 as then in effect are not met in the following events:

(1) Failure to divert or report: Contractor fails to meet its Minimum Diversion Guaranty, to timely submit reports in accordance with Section 10.02, or to provide City promptly upon City request Records that contain information that must be included, directly or indirectly, reports required to be timely submitted by City in accordance with the Public Resources Code.

(2) SRRE: the fine or penalty is not based solely upon the failure of the City to establish and maintain a source reduction and recycling element as required by the Public Resources Code, as that basis may be established, recited, declared, found or determined by the California Integrated Waste Management Board;

(3) Administrative relief: the City has affirmatively sought in good faith, all administrative relief available pursuant to Chapter 6 (commencing with Section 47680) and Chapter 7 (commencing with Section 41800) of part 2 of the California Public Resources Code, unless the City demonstrates good cause, based on substantial evidence in the record, for not pursuing that administrative relief. The Parties agree that good cause may include City's estimate that City's Reimbursement Costs of seeking administrative relief exceed Solid Waste Management Fees budgeted to fund implementation of the City's source reduction and recycling plan.

If the City's failure to meet diversion requirements results in whole or in part from Contractor's breach of this Agreement (including Section 6.03) or noncompliance with any other authorization, Contractor's indemnity obligation will be apportioned in accordance with the percentage of fault of the City and the Contractor. Parties agree that if the California Waste Management Board does not apportion percentage of fault, Contractor's fault will be the Allocable Fault defined in subsection a(2).

Contractor's indemnity obligation will further be limited to that portion of any fine or penalty caused by Contractor's breach or noncompliance of an express obligation or requirement under this Agreement (including the Minimum Diversion Guaranty) or the City Code; and limited to a *pro rata* portion of those fines and penalties equal to Contractor's Allocable Fault, as defined in subsection a(2).

c. Survival. CONTRACTOR'S DEFENSE AND INDEMNIFICATION OBLIGATIONS PROVIDED IN THIS SECTION WILL SURVIVE THE TERM.

6.03 Minimum Diversion Requirement.

a. Annual Compliance and Remedies.

(1) Minimum Diversion Requirement. Contractor will annually, in each calendar year, recycle and/or process and market, or cause to be recycled and/or processed and marketed, Solid Waste Collected by Contractor in a manner which entitles City to diversion credit as specified in Section 41780 of the California Public Resources Code, at least 26% of all Recyclables and Refuse that is Collected by Contractor ("**Minimum Commercial Solid Waste Diversion Requirement**"), and 70% of all C&D Debris that is Collected by Contractor ("**Minimum C&D Debris Diversion Requirement**", and together with the Minimum Commercial Solid Waste Diversion Requirement, the "**Minimum Diversion Requirement**").

(2) Solid Waste Management Fee Reductions and Increases

(i) Exceeding Minimum Diversion Requirements: Fee Reductions. If Contractor exceeds either the Minimum Commercial Solid Waste Diversion Requirement or Minimum C&D Debris Diversion Requirement during any three months covered in each Quarterly Report, for each diversion percentage point or portion thereof *greater* than the Minimum Commercial Solid Waste Diversion Requirement or Minimum C&D Debris Diversion Requirement, together with timely submission of its Quarterly Report Contractor may deduct from its payment to the City of the Solid Waste Management Fee an amount equal to the percentage of its gross Service Fees received for providing Refuse and Recyclables Collection Services, or C&D Debris Collection Services, respectively, as indicated on the tables in paragraph (iii).

(ii) Failing to meet Minimum Diversion Requirements: Fee Increases. If Contractor fails to meet either the Minimum Commercial Solid Waste Diversion Requirement or Minimum C&D Debris Diversion Requirement calculated with respect to any three months covered in each Quarterly Report, for each diversion percentage point or portion thereof *less* than the Minimum Commercial Solid

Waste Diversion Requirement or Minimum C&D Debris Diversion Requirement, together with timely submission of its Quarterly Report Contractor will pay City an incremental Solid Waste Management Fee equal to the percentage of its gross Service Fees received for providing Refuse and Recyclables Collection Services, or C&D Debris Collection Services, respectively, as indicated on the tabled in paragraph (iii).

The Parties acknowledge that City has been the subject of a compliance order by the California Integrated Waste Management Board for failure to timely comply with AB 939, and the consequent agreement with the Board, and that City procured this Agreement for reasons including securing performance standards and obligations intended to help the City meet its AB 939 diversion obligations. Therefore compliance with the Minimum Diversion Requirement is of the utmost importance to the City, which faces fines of up to $10,000 for noncompliance with AB 939. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable collection service, and if Contractor fails to meet the Minimum Diversion Requirement, it is and will be impracticable and extremely difficult to ascertain and determine the value thereof. Therefore, the Parties agree that the above increases in Solid Waste Management Fee represent a reasonable estimate of the amount of the costs that might accrue to the City if Contractor does not meet the Minimum Diversion Requirement, 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, anticipation that proof of actual costs would be costly or inconvenient, and possible restrictions on Contractor's ability to indemnify City for fines payable for AB 939 noncompliance in accordance with Section 40059.1 of the California Public Resources Code, whether due to explicit provision of Section 40059.1 or uncertainty in enforcement thereof due to ambiguity of its terms or meaning, or otherwise. In signing this Agreement, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this provision at the time that this Agreement was made.

(iii)

Commercial Solid Waste diversion %	**Solid Waste Management Fee reduction (-) or increase (+) %**
40	-5
38	-4
36	-3
34	-2

32	-1
30	0
28	0
26	0
24	+1
22	+2
20	+3
18	+4
16	+5
14 or less	+6 and one additional percentage point for each two percentage points less than 14%

C&D Debris Diversion %	**Solid Waste Management Fee reduction (-) or increase (+) %**
95	-5
90	-4
85	-3
80	-2
75	-1
70	0
65	+1
60	+2
55	+3
50 and below	+4 and one additional percentage point for each 5 percentage points less than 45%

b. Measurement of Minimum Diversion Requirement.

(1) Minimum Commercial Solid Waste Diversion Requirement. Compliance with the Minimum Commercial Solid Waste Diversion Requirement referenced in subsection a is measured by calculating the percentage that Contractor's diverted Recyclables comprises of Contractor's total Collected Refuse and Recyclables:

Minimum Commercial Solid Waste Diversion Requirement = 100 X [diverted Recyclables] / Collected Recyclables + Collected Refuse].

(2) Minimum C&D Debris Diversion Requirement. Compliance with the Minimum C&D Debris Diversion Requirement referenced in subsection a is measured by calculating the percentage that Contractor's diverted C&D Debris comprises of Contractor's total Collected C&D Debris:

Minimum C&D Debris Diversion Requirement = 100 X [diverted C&D Debris / Collected C&D Debris].

c. Corroboration of Diversion.

(1) AB 939 Reports. The amount of diverted Reyclables and C&D Debris will be based upon Tons of those materials diverted by the Recyclables Processing Facility and C&D Debris Processing Facility, respectively, allocable to the City as may be reported by the Recyclables Processing Facility and C&D Debris Processing Facility to the Integrated Waste Management Board in compliance with AB 939 reporting requirements. Conversely, the City may calculate or direct Contractor to calculate the amount of diverted Tons based upon Tons of residual remaining after processing of Recyclables allocable to the City, as so reported.

(2) Primary Source Documentation. Alternatively, the City may calculate, or direct Contractor to calculate, the amount of diverted Reyclables and C&D Debris, based upon Tons of those materials diverted by the Recyclables Processing Facility and C&D Debris Processing Facility, respectively, as corroborated by written documentation provided by the Recyclables Processing Facility and C&D Debris Processing Facility that may serve as the basis of the AB 939 reports described in paragraph (1), acceptable to City, including: weigh tickets; invoices; bills of lading; and receipts from Recyclables and C&D Debris transporters, shippers, brokers, beneficiators, remanufacturers and purchasers or other users.
Documentation is subject to adjustment in accordance with subsection e, in the event of commingling. Contractor will provide City with copies of documentation within 7 days of City's direction.

d. Determination of Collected Materials. The amount of Recyclables, Refuse and C&D Debris

Collected by Contractor will be established by written documentation acceptable to City provided by the Solid Waste Management Facilities, including: weigh tickets; invoices; and reports submitted by the Solid Waste Management Facilities to the California Integrated Waste Management Board with respect to materials allocable to the City. That documentation is subject to adjustment in accordance with subsection e, in the event of commingling. Contractor will provide City with copies of that documentation within 7 days of City's direction.

e. Allocation of Commingled Materials. If Contractor commingles Recyclables, C&D Debris or Refuse that are Collected from Commercial Customers with recyclables, construction and demolition debris or refuse generated by or collected from Persons other than Commercial Customers (including residential routes within and outside the City and commercial routes outside the City), then Contractor will determine Tons of Collected Recyclables, Refuse and C&D Debris for purposes of subsection b, as follows.

The total weight of a Vehicle's load in Tons will be divided by:

(i) the aggregate cubic yard capacity ("**Commercial Route Capacity**") of Containers that Contractor Collects with that Vehicle from Commercial Customers, based on Records of Customer's Service, including Customer Service Subscription Orders and invoices, plus

(ii) the aggregate cubic yard capacity ("**Other Route Capacity**") of carts or bins that Contractor collects with that Vehicle from Persons other than Commercial Customers, including single family homes, duplexes, triplexes, apartments, stock cooperative and condominium residences, as well as commercial customers located outside the City, based on written records of those customer's service, including subscription orders and invoices. The conversion ratio for carts that have capacities measured in gallons rather than cubic yards, is 200 gallons to 1 cubic yards.

The resulting average Tons/cubic yard will be multiplied by the Commercial Route Capacity.

Upon City direction, Contractor will promptly supply City with documentation supporting allocation calculations, including route collection maps and sheets, and totals of Containers by size and capacity. If City disagrees with the allocation calculations, it may correct the calculations. Contractor will be bound by those corrections.

f. Annual Reconciliation. In its Annual Report, Contractor will compare the dollar amount of Solid Waste Management Fees that Contractor owes City for that calendar year with the actual dollar amount of Solid Waste Management Fees that Contractor paid City during the first, second and third quarters of that calendar year.

(1) Excess Payments. Contractor may apply any excess Solid Waste Management Fee to future Solid Waste Management Fees, or if the Term is expiring or Contractor is no longer providing service in the City, Contractor may request that the City reimburse the dollar amount of the excess.
(2) Deficit payments. Contractor will pay City any additional Solid Waste Management Fees together with timely submission of the Annual Report. Failure to timely pay any Solid Waste Management Fee is an Event of Default, and City may, among other remedies, draw on the performance bond, letter of credit, Guaranty or other performance assurance provided by Contractor in accordance with Article 11.

6.04 Additional Diversion Programs. If the City finds that additional programs are necessary to meet any required diversion goals, the City may require Contractor to submit proposals in accordance with Section 9.02a for additional diversion programs to meet diversion requirements. Contractor may submit proposals in accordance with Section 9.02b therefor on its own initiative. If necessary, City and Contractor will enter into good faith negotiations, but if agreement regarding programs and/or fee adjustments cannot be reached, either Party may refer the matter to the Independent Expert for determination in accordance with Section 9.03, and the City may independently implement programs that may be needed to comply with the requirements of Applicable Law.

6.05 Processing Fees. Contractor will pay the costs of processing Recyclables at Recyclables Processing Facilities and C&D Debris at C&D Processing Facilities and may recover those costs in the Service Fee. Contractor warrants that all Recyclables that it delivers to Recyclables Processing Facilities and C&D Debris that it delivers to C&D Debris facilities and for which it seeks cost recovery from Service Fees will be collected from Customers in performing Services and that breach of this warranty constitutes a Event of Default.

6.06 Enforcement of Anti-Scavenging Laws. Contractor will cooperate with City in enforcing anti-scavenging laws, including instituting civil actions against a Person alleged to have violated Section 41950 of the Act for treble damages, as measured by the value of the material removed, or a civil penalty of not more than one thousand dollars, whichever is greater, for each unauthorized removal, in accordance with Section 41953 of the Act.

6.07 No Commingling. In order to promote public participation in source separation and minimize contamination of Recyclables and maximize diversion thereof, Contractor will not commingle, in the Vehicles or otherwise, any Refuse with any Recyclables or C&D Debris without the express prior written authorization of the City. Parties acknowledge that Customers might not cooperate with

Collection programs and might commingle materials.

6.08 Site Visits and Customer Diversion Reporting. The City acknowledges that its partnership with Contractor in providing Customer outreach described in this Section, to increase Customer participation in recycling and diversion, is important in order to help Contractor implement a successful recycling and diversion program.

a. Site visits. Before November 30, 2002, Contractor will visit each Customer's premises to conduct a business waste reduction and recycling on-site survey (**"Site Survey"**) in substantially the form approved by the California Integrated Waste Management Board as Attachment 1 to Agenda Item 15 at its Board Meeting of April 24-25, 2001, or other form satisfactory to City. After that date, Contractor will annually visit each Customer whose premises occupy over approximately 50,000 square feet. During the year commencing November 30, 2004, Contractor will visit each Customer to conduct a follow-up Site Survey.

The City will provide Contractor with a letter of introduction to Customers on City letterhead summarizing State law requiring waste diversion, requesting Customers to participate in the Site Survey, and assuring Customers that Customers' names will not be forwarded to the California Integrated Waste Management Board. Contractor will distribute that letter to Customers prior to conducting the Site Surveys.

Contractor will make written recommendations to Customers on recycling and diversion options and opportunities, based on the results of the Site Surveys. Contractor will forward copies of the completed Site Surveys and recommendations to the City promptly upon City direction.

b. Customer diversion reporting. Each Contract Year the City will provide Contractor with a letter to Customers on City letterhead requesting Customers to describe and estimate the amount of Solid Waste recycling and diversion they conduct prior to setting out Reyclables for Collection by Contractor, including donation, sale or other service subscription. Contractor will distribute that letter together with a postage prepaid reporting form to all Customers. Contractor will submit the form to City at least one month prior to mailing the form, and the City or its waste reduction consultants may comment on the form. Contractor will incorporate any City comments prior to distributing the form to Customers. Contractor will forward copies of the completed forms or summaries of the recycling and diversion volumes and character reported in the forms, to the City promptly upon City direction.

c. Distribution of Promotional Materials. In conjunction with Contractor's public awareness obligations in Section 4.06b, at least once each Contract Year, Contractor will distribute flyers,

pamphlets, brochures or other written information describing Contractor's Reyclables Services and other opportunities for Customers to reduce, reuse, recycle and divert Solid Waste. Contractor will submit the materials to City at least one month prior to mailing them, and the City or its waste reduction consultants may comment on them.

ARTICLE 7 DISPOSAL

7.01 Transportation to Disposal Facility.

a. Contractor Identification. Contractor will transport and deliver all Refuse to the Refuse Disposal Facility and all C&D Debris that cannot be diverted from Disposal to the C&D Debris Disposal Facility. Contractor may change that identification upon Notice to the City in accordance with Section 3.03b. Contractor will not dispose of Recyclables, as prohibited in Section 9.12.080 of the City Code. Contractor will also attach thereto information relating to the Refuse Disposal Facility and C&D Debris Disposal Facility, including:

(1) name of their respective owner and operator;

(2) address;

(3) contact Person and telephone number; and

(4) method of allocating Refuse to Contractor and the City, which method is used to report Solid Waste disposal to the California Integrated Waste Management Board, and which will be certified by an authorized personnel or officer of that owner or operator.

If Contractor enters into any contract, agreement, subscription order or other understanding with the Refuse Disposal Facility or C&D Debris Disposal Facility, it will use Reasonable Business Efforts to provide that terms and conditions such as insurance requirements and indemnifications can be enforced by the City as a third party beneficiary thereof. If Contractor owns the Disposal Facility, it will name the City an additional assured on any liability and environmental pollution policies it carries and indemnify, defend with counsel approved by the City, protect and hold harmless the City (including Persons described in the definition of "City" in Exhibit 1.01) from and against all Liabilities paid, incurred or suffered by, or asserted against, the City arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at the Disposal Facility.

(I) Contractor which Collects Refuse warrants throughout the Term that the Refuse Disposal Facility, and

(II) Contractor which Collects C&D Debris warrants throughout the Term that the C&D Debris Disposal Facility.

are respectively authorized and permitted to accept Refuse and C&D Debris, respectively, in accordance with Applicable Law and are in full compliance with Applicable Law.

b. City Designation. The City reserves the right to designate the Refuse Disposal Facility or C&D Debris Disposal Facility upon 30 days Notice by the City Representative in accordance with Section 3.03c. City will make any designation in good faith in the best health, safety and fiscal interest of City commercial businesses, including minimizing risks of environmental or pollution liabilities, without intending to favor any other Person collecting solid waste in the City over the Contractor. Prior to City's designating that Facility, City will meet with Contractor to discuss City's considerations in making that designation and Contractor's comments thereon. If Contractor has a legal, valid and binding commitment to deliver specified Refuse or C&D Debris tonnage or to pay a specified fee for related tonnage, as evidenced to satisfaction of City, entered into by Contractor prior to the Commencement Date, City's designation will not become effective until the termination of that commitment.

Contractor will observe and comply with all regulations in effect at the Disposal Facility and C&D Debris Facility and cooperate with the operators thereof with respect to operations thereat, including directions to unload collection vehicles in designated areas, accommodating construction and maintenance, and hazardous waste exclusion programs. Contractor will at all times operate according to safe industry practices.

7.02 Defense and Indemnification

a. Conduct Included.

(1) Contractor. Contractor will indemnify, defend with counsel approved by the City, protect and hold harmless the City (including Persons described in the definition of "City" in Exhibit 1.01) from and against all Liabilities paid, incurred or suffered by, or asserted against, the City arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place identified by Contractor in accordance with Section 7.01a where Contractor delivers, stores, processes, recycles, composts or

disposes of Solid Waste to the extent that those Liabilities are caused by the following:

(i) Contractor negligence or misconduct: the wrongful, willful or negligent act, error or omission, or the misconduct of the Contractor;

(ii) Non-Customer materials: the collection, delivery, handling, recycling, processing, composting or disposal by the Contractor of any materials or waste, including Hazardous Waste, which are generated by Persons other than Customers or collected from premises other than Customers' premises;

(iii) Failure to Comply with Hazardous Waste Protocol: the failure of Contractor to undertake Hazardous Waste training procedures required by Applicable Law with respect to its employees or any subcontractors' or the Hazardous Waste Screening Protocol, whichever is more stringent;

(iv) Contractor-identified Hazardous Waste: the improper or negligent collection, handling, delivery, processing, recycling, composting or disposal by Contractor of Hazardous Waste which Contractor inadvertently collects and which Contractor identifies as Hazardous Waste prior to its delivery, processing, recycling, composting or disposal.

(2) City. City will indemnify, defend with counsel approved by the Contractor, protect and hold harmless the Contractor (including Persons described in the definition of "Contractor" in Exhibit 1.01) from and against all Liabilities paid, incurred or suffered by, or asserted against, the Contractor arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place designated by City in accordance with Section 7.01b where Contractor delivers, stores, processes, recycles, composts or disposes of Solid Waste to the extent that those Liabilities are caused by the wrongful, willful or negligent act, error or omission, or the misconduct of the City. City is not obligated to indemnify Contractor if those Liabilities are caused by any of the events listed in items (i) through (iv) of subsection a(1).

b. City Sole Negligence Excluded. The Contractor will not, however, be required to reimburse or indemnify the City to the extent any Liabilities are due to the sole negligence of the City with respect to Services. The City acknowledges that the mere presence of Household Hazardous Waste in the Refuse or C&D Debris Collected under this Agreement will not constitute negligence and in and of itself create any liability on the part of the Contractor absent any of the circumstances described in items (i) through (iv) in subsection a(1).

c. Indemnification With Respect to Services Only. Contractor's indemnification is limited to

Liabilities resulting from and after the Commencement Date through the Term. Any liabilities attributable to the Contractor's actions prior to the Commencement Date are excluded from Contractor's indemnification. However, CONTRACTOR'S INDEMNIFICATION WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

d. Statutory Agreement. Contractor's and City's indemnities under this Section are intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify the City from liability in accordance with this Section. Contractor's indemnification under this Section includes the specific actions or inactions of Contractor described in items (i) - (iv) of subsection a(1) (by way of example, a driver accepting a Customer bribe and illegally disposing of Hazardous Waste that upon identification thereof, must be segregated and transported in accordance with Applicable Law).

7.03 Disposal Fees. Contractor will pay Disposal Fees for disposing of Refuse and C&D Debris at Refuse Disposal Facilities and C&D Disposal Facilities, respectively, and may recover the cost of disposal in the Service Fee in accordance with Section 13.01. Contractor warrants that all Refuse and C&D Debris that it delivers to the Refuse Disposal Facility and C&D Disposal Facility, respectively, and for which it seeks cost recovery in Services Fees will be collected from Customers in performing Services and that breach of this warranty constitutes a Event of Default.

ARTICLE 8 MISCELLANEOUS SERVICE PROVISIONS

8.01 Emergency Services. Within 24 hours of City Notice, Contractor will provide, or begin providing, emergency services beyond the scope of Services at the times and to the extent directed by the City, including unscheduled collection and disposal of C&D Debris and other debris consequent upon natural disasters such as earthquakes and floods. City will compensate Contractor its Contractor's Reimbursement Costs for those Services.

8.02 News Media Relations. Contractor will notify City Representative by telephone followed by printed copy of all requests for news media interviews related to the Services within 24 hours of Contractor's receipt of the request. Before responding to any inquiries involving issues other than those relating to descriptions of Collection programs and scope of Services, Contractor will discuss Contractor's proposed response with City. Contractor will submit copies of draft news releases or proposed trade journal articles to City for prior review and approval at least 5 working days in advance of release. Contractor will provide copies of articles resulting from media interviews or news

releases to the City within 5 days after publication.

8.03 Title to Solid Waste. All Solid Waste becomes the property of City when Customers abandon and discard it at the proper place designated for disposal and/or recycling, and all Solid Waste become the property of Contractor when Contractor Collects it, all as further provided in Section 9.12.100A of the City Code. This Agreement will not affect any other agreement Parties may reach with respect to Services, including sharing revenues from Recyclables sales and designating a Solid Waste Management Facility.

8.04 Compliance with Law. Contractor will perform, and will cause any contractors or subcontractors to perform, all Services in accordance and compliance with Applicable Law, including obtaining and maintaining throughout the Term all necessary Permits (including any business license required the City Code and permit required under Section 9.12.020 of the City Code) required to perform Services. If that City permit remains in effect in accordance with Section 9.12.020 of the City Code following the expiration or termination of this Agreement, Contractor nevertheless may not operate within the City for collection of solid waste of any kind. THIS PROHIBITION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT, and City may seek specific enforcement of this prohibition in accordance with Section 14.04d.

Contractor will apply and pay for any Permits required by the City at Contractor's sole cost. Contractor will show proof of Permits and will demonstrate compliance with the terms and conditions of Permits upon the request of the City. In particular, Contractor warrants and represents that it is fully acquainted with the provisions of the City Code.

The Contractor acknowledges that the City is authorized to make all necessary and reasonable rules and regulations regarding all aspects of solid waste handling services and Contractor agrees to comply with those rules and regulations, subject to clause (vi) of the definition of "Uncontrollable Circumstances" and Article 9 relating to possible adjustments in the Fee for Changes in Law.

Provisions of Applicable Law are incorporated in this Agreement by reference as if set forth fully in this Agreement as contractual obligations of Contractor to City. City may enforce those provisions in the same manner as Contractor's other obligations under this Agreement, including specific performance. If any terms of this Agreement are more stringent than comparable provisions of Applicable Law, the provisions of this Agreement will apply. Citation to specific provisions of Applicable Law (including law and regulations) include future amendments to or recodification of those provisions and to other Applicable Law (including regulations) promulgated thereunder.

Reference to particular provisions or requirements of Applicable Law herein will not be construed to limit Contractor's obligation to comply with all provisions of Applicable Law. Nothing herein is construed to relieve the Contractor of any obligations imposed by Applicable Law. In the event of any inconsistency between Applicable Law and this Agreement, the more stringent provision will apply.

8.05 Cooperation with Waste Studies. Contractor will cooperate with City on any and all waste composition studies conducted no more frequently than once each Contract Year, at no additional cost to City, including modification of routes, separate collection of an individual Customer's Solid Waste, and/or delivering targeted loads of Solid Waste to a City-designated location or locations.

8.06 Service Materials Belong to City. Reports prepared by Contractor in accordance with Article 10, public education and community relations materials prepared in accordance with Sections 4.06 and 6.08 and all work product (whether computerized, written, printed or photographic) developed by Contractor in connection with Services, is and will remain the property of the City without limitation or restriction on the use of those materials by City. Contractor will not use those materials in connection with any project not connected with this Agreement without the prior written consent of City.

8.07 Recycled Materials. Contractor will use Reasonable Business Efforts to procure supplies with post-consumer recycled content in accordance with the City's Recycled Content Procurement Policy adopted by the City pursuant to Resolution 00-44 and appended to this Agreement for convenience of the Parties as Exhibit 8.07. Contractor will procure Carts which are recyclable, and paper products for all publicity, billing and other management and operational Services having not less than 20% recycled paper content, including at least 10% post-consumer recycled paper content.

ARTICLE 9. CHANGE IN SCOPE OF SERVICES

9.01 Change in Scope of Services.

a. Upon City Direction. The City may direct Contractor to implement a change in scope of Services at any time, including new or amended diversion programs or special services, for any reason whatsoever.

b. Upon Contractor Proposal. The Contractor may propose to the City a change in the scope of

Services, including new developments in collection technologies and techniques and programs which would facilitate compliance with AB 939 diversion requirements, at any time, for any reason whatsoever, subject to City approval.

9.02 Review and Comment

a. City's Request for Cost Proposal. Prior to directing a change in scope of Services the City will submit a request to the Contractor to propose a plan implementing City's proposed Service changes, including an implementation schedule and the estimated impact, if any, on the Service Fee. The City may withdraw its request at any time, for any reason, including receipt of a proposal from Contractor unsatisfactory to the City. The City may implement its proposed Service changes itself or through other Persons.

b. Contractor's Proposal. Within 10 days of receiving the City's request for estimates (or a longer period as City may designate in light of the complexity or magnitude of the change directed by the City) or in conjunction with its own proposal, the Contractor will submit its proposal described in subsection a. Contractor will include documentation supporting its cost proposal, including cost substantiation required with respect to increases, if any, in the Service Fee. The proposal is deemed the Contractor's offer to the City to implement the change in accordance with the terms of the proposal and will remain binding for 30 days.

If City requests or Contractor proposes to add another material to the list of Recyclables to be collected, processed and/or marketed by Contractor, Contractor will describe the extent to which the addition of the proposed material would require the modification of Vehicles, an additional Container(s), additional Vehicles or routes, or additional route time and the associated additional costs, if any.

c. Proposal Review. Within 20 days of receiving the Contractor's proposal, the City may review, approve, or disapprove the proposal and comment on it. If the City does not respond within that time, its approval will be deemed not given. Contractor will incorporate the City's comments promptly, but in all events within 15 days. With respect to a City-initiated request, if Contractor disagrees with City's comments and Contractor and City cannot reach agreement during that 15 day period, the City may Notify Contractor to submit the matter to the Independent Expert for determination in accordance with Section 9.03, or implement the change itself or through another contractor. However, the Parties will negotiate in good faith for the purpose of reaching an agreement.

d. Proposal Implementation. Upon City approval of Contractor's proposal or determination of the

Independent Expert in accordance with Section 9.03, the Contractor will diligently perform the Services in accordance with its proposal.

9.03 Independent Expert

a. Selection. If either Party wishes to select an Independent Expert, each Party will prepare a separate list of 5 independent Persons having experience in refuse, recycling and construction and demolition debris collection, as applicable in the Parties' dispute, in numerical order with the first preference at the top, and exchange and compare lists. The independent expert ranking highest on the 2 lists by having the lowest total rank order position on the 2 lists will be the Independent Expert. In case of a tie in scores, the expert having the smallest difference between the rankings of the 2 parties will be selected; other ties will be determined by a coin toss. If no expert appears on both lists, this procedure will be repeated. If selection is not completed after the exchange of 2 lists or 60 days, whichever comes first, then each Party will select one expert having experience described above and the 2 experts so selected will together select an Independent Expert.

b. Costs. Parties will share the Independent Expert's costs and fees equally.

c. Binding Determination Protocol. Upon City's Notice of submission of disputes with respect to proposals in accordance with Section 9.02c and Uncontrollable Circumstances in accordance with 14.03b, the Parties will each give the Independent Expert notice detailing the dispute together with a written statement of each Party's position thereon. Parties will simultaneously exchange copies thereof. Both Parties will, in good faith and in writing, promptly provide the Independent Expert with any and all additional information and documentation the Independent Expert requires or requests in order to make its determination and simultaneously provide the other Party with copies thereof. Neither Party will communicate orally with the Independent Expert *unless* the other Party is privy thereto. Neither Party will communicate in writing with the Independent Expert *unless* it simultaneously sends copies of that communication to the other Party, in the same manner that it sends that communication to the Independent Expert.

The Independent Expert will make its determination based on the submissions of the Parties, the provisions of this Agreement, its experience with similar services and disputes, and other factual determinations it may make regarding the matter in dispute.

ARTICLE 10. RECORDS AND REPORTING

Contractor acknowledges City's right to review Records and receive reports provided in this Article,

for reasons including:

(1) determining compliance with the Minimum Diversion Guaranty,

(2) enforcing Customers' rights;

(3) evaluating Contractor's performance under this Agreement;

(4) exercising City's rights to perform, or cause a third Person to perform, Contractor's Service obligations in Events of Default and Uncontrollable Circumstances; and

(5) corroborate the amount of any Service Fees or other amounts due and payable to City.

10.01 Records

a. Maintenance. Unless otherwise directed by the City, Contractor will accurately maintain Records described in Exhibit 10.01a for the Term plus 2 years, or any longer period required by Applicable Law.

b. City Inspection and Audit. Upon Notice by the City, Contractor will use Reasonable Business Efforts to provide copies of Records to City or City's designees for inspection or audit at City offices. The scope of that audit may include any period within the previous 5 years prior to the date Contractor executed this Agreement during which time Contractor received remuneration for providing solid waste collection service in the City. Otherwise, Contractor will make Records available to City or City's designees for inspection or audit at an office of Contractor in Los Angeles County during Phone Hours as required by Section 9.12.070C of the City Code. Contractor will use Reasonable Business Efforts to promptly provide the City with any additional information relevant to this Agreement. The City's inspection or audit may include verification of Solid Waste Generation Fees, Solid Waste Management Fees and Minimum Diversion Requirements. If the results of any inspections or audits demonstrate that any amounts Contractor reported to City differ from the actual and correct amount by the lesser of 4% or $10,000, then Service Provider will pay City's Reimbursement Costs for that inspection or audit.

10.02 Reporting

a. Monthly. Contractor will submit monthly Service reports to City in written form no later than the 20th day of each month and containing, at a minimum, the information listed in Exhibit 10.02a

for the preceding month ("**Monthly Reports**"), all as further required by Section 9.12.070A of the City Code.

b. Quarterly. Contractor will submit quarterly reports to City on or before 20 days following the end of each quarter described in Exhibit 10.02b, totaling the information contained in the Monthly Reports for that quarter and containing, at a minimum, the information listed in Exhibit 10.02b, including information needed for the City to prepare quarterly reports required under Applicable Law (including AB 939) with respect to recycling and diversion of Solid Waste in the City ("**Quarterly Reports**.")

c. Annual. Contractor will submit annual reports to City on or before July 20 of each year totaling the information contained in the Quarterly Reports for that Contract Year and containing, at a minimum, the information listed in Exhibit 10.02c, including reports required under Applicable Law (such as AB 939) with respect to recycling and diversion of Solid Waste in the City ("**Annual Reports**").

d. Additional Information. Contractor will use Reasonable Business Efforts to incorporate additional information from Records promptly upon Notice from City.

10.03 Financial Records. Contractor will maintain in its office accurate and complete financial Records of its gross receipts paid by Customers. Contractor will segregate gross receipts paid by Customers from gross receipts paid by Persons other than Customers from other operations.

10.04 Proprietary Records and Reports. If City receives a request from a third Person to review or copy material which Contractor has marked "confidential", City will Notify Contractor promptly and allow Contractor to present arguments and facts to City in support of Contractor's position that the material is entitled to an exemption from disclosure under the State Public Records Act and should not be released. If City determines that the material is *not* entitled to an exemption under this Agreement and that it must be released, City will so advise Contractor before releasing that material so that Contractor may seek a court order enjoining that release. If City determines that the material is entitled to that exemption, and the Person who requested the information files a legal action seeking its release, City will promptly inform Contractor and will not oppose a motion by Contractor to intervene in the action. Contractor must either intervene or accept the release of the material. City will have not have any obligation to defend the action and may release the material sought without liability whatsoever for City.

ARTICLE 11. INDEMNITIES, INSURANCE, BONDS

11.01 Insurance

a. Policies

(1) Types and Amounts. Contractor will

(i) secure and maintain, and

(ii) enter into agreements to cause its subcontractors, if any, to secure and maintain, or alternatively provide that its subcontractors are insureds under Contractor's policies,

in full force and effect the types and amounts of insurance coverage, together with related specified deductibles, listed in Exhibit 11.01 or required by Applicable Law (including Section 9.12.030B and C of the City Code), whichever is greater, in form acceptable to City. The City's Risk Manager is by this Agreement authorized to reduce insurance requirements if he or she determines that the reduction is in the City's best interest. Upon direction of the City, Contractor will reduce or eliminate deductibles or self-insured retention with respect to the City or procure a bond guarantying payment of losses and related investigations, claim administration and defense expenses. If any third person makes a claim against Contractor or any subcontractors exceeding the amount of any deductibles or self-insured reserves, Contractor will promptly Notify the insurer and City thereof.

(2) Required Provisions.

Primary. Policies will always be primary with respect to the Contractor's Services and the City, the City's affiliated employees, Board members, officers, officials, agents, assigns and volunteers ("**City Insureds**").

Additional insureds. City Insureds must be included as additional insureds by endorsement under the General and Automobile Liability Policies. A copy of the endorsement or evidence of blanket or contractual additional insured status must be submitted with the certificate(s) of insurance.

Excess, not contributory. Insurance coverage written specifically for the City is considered to be excess and not contributory and any insurance or self-insurance maintained by City Insureds is in excess of Contractor's insurance and will not contribute with it.

Separate application. All insurance will apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

No special limitations. Coverage will contain no special limitations on the scope of protection afforded to City Insureds.

Reporting provisions. Any failure to comply with reporting provisions of policies will not affect coverage provided to City Insureds.

Waiver of subrogation. Insurer must waive all rights of subrogation against City Insureds for losses arising from performance of Services by Contractor.

b. Insurers. Contractor will procure insurance from insurers approved by City Risk Manager, an admitted company in California, having a size category of VII or larger and a rating of A or better ("A-VII") by A.M. Best Company, Inc..

c. Notices to City of Cancellation, etc.. Policies must bear endorsements providing that coverage will not be suspended, voided, canceled by either party, reduced in coverage or limits, not renewed, or otherwise changed or modified except after prior written notice by certified mail, return receipt requested, to City 30 days in advance, or if the reason for cancellation is non-payment of premiums, 10 days in advance. Endorsements will not contain mere "best effort" modifiers or relieve the insurer from its responsibility to give the City notice.

d. Evidence of Coverage. Contractor will procure insurance policies and endorsements required under this Agreement, signed by an authorized representative of the insurance company and including the signatory's company affiliation and title. Upon City request, Contractor will provide or cause to be provided to City documentation acceptable to City verifying that the individual signing those documents is authorized to do so by the insurer. At that time and thereafter simultaneously with renewal of policies, Contractor will file with the City evidence of coverage in force (including original endorsements) or renewals thereof in accordance with the provision of this Agreement, together with a certificate of insurance, in form and substance satisfactory to City (including type and amount of coverage, effective dates and expiration dates) signed or counter-signed by an authorized officer of the insurer, certifying that the coverage has not lapsed and will remain in effect at all times required under this Agreement. Upon direction and Notice of the City, Contractor will promptly provide City complete, certified copies of policies at any time. If Contractor fails to procure and maintain any insurance required under this Agreement, at its sole option City may take out and maintain insurance at Contractor's expense and Contractor will pay the City the City's Reimbursement Costs therefor. This remedy is in addition to City's right to declare an Event of Default under item (8) of Section 14.02 and terminate the Agreement in accordance with Section 15.01. Upon request of the City, the

Contractor will cause its subcontractors (if any) to provide proper evidence of insurance coverage required under this Agreement, satisfactory to the City. Contractor will institute a comprehensive accounting system to assure the City it is monitoring all insurance requirements under this Agreement, including those of its subcontractors.

e. Contractor Compliance. Contractor will comply with all requirements of its insurance policies and the insurers. Carrying insurance will not relieve Contractor from any obligations under this Agreement. Nothing in this Agreement is construed as limiting in any way the extent to which the Contractor may be held responsible for payments of damages to Persons or property resulting from Contractor's or any subcontractors' performance of Services.

f. Worker's Compensation. Contractor will maintain at an experience modification factor used to calculate Contractor's workers compensation insurance premium at 1.25 or less.

11.02 Contractor Indemnification and Defense

a. General. Contractor will indemnify, defend with counsel approved by the City, protect and hold harmless the City (including the Persons described in the definition of "City" in Exhibit 1.01) from and against all Liabilities paid, incurred or suffered by, or asserted against, the City in connection with this Agreement.

b. City Negligence Excluded. The Contractor will not, however, be required to reimburse or indemnify the City to the extent any Liabilities are due to the sole negligence of the City with respect to Services.

c. Indemnification During Term Only. Contractor's indemnification is limited to Liabilities resulting from Services from and after the Commencement Date through the Term. However, CONTRACTOR'S INDEMNIFICATION RESULTING FROM SERVICES DURING THE TERM WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

11.03 Performance Bond. Contractor will secure as of the Commencement Date of this Agreement and throughout the Term maintain in full force and effect a commercial blanket performance or surety bond to guarantee and assure the timely and complete performance of Services, the larger of the following amounts:

(1) the amount required under Section 9.12.030 of the City Code, or

(2) an amount not less than (i) 10% of Contractor's Service Fee during the previous Contract Year or, (ii) during the first Contract year of this Agreement, if Contractor supplied collection services in the City under permit from the City prior to entering into this Agreement, an amount no less than the solid waste management fee that Contractor paid pursuant to that permit.

Contractor will fully prepay the performance or surety bond for each Contract Year. Contractor will attach the bond to Exhibit 3.01a as a Term Condition, naming the City as obligee and providing at least 30 days prior notice of any cancellation. Contractor will procure the bond from underwriters approved by the City Auditor-Controller, licensed in California, having a size category of VII or larger and a rating of A or better ("A-VII") by A.M. Best Company, Inc.. The form of the bond and the surety are subject to the approval of City's Risk Manager and the City Counsel. The condition of the performance bond is that if Contractor well and truly performs the covenants, promises, undertakings and obligations contracted by Contractor to be performed under this Agreement, then the obligation of the bond is void; otherwise it will remain in full force and effect. The bond will terminate and be canceled upon the completion of all of Contractor's obligations under this Agreement. City will execute and deliver to Contractor or Contractor's surety company promptly upon Contractor's completion of all of Contractor's obligations under this Agreement, those certificates or other documents as either of them may reasonably request for the purpose of terminating and canceling the performance bond.

11.04 Guaranty Agreement. As of the Commencement Date and throughout the Term, if Contractor has any Affiliates having a direct or indirect Ownership interest in Contractor, Contractor will provide a Guaranty that is legal, valid and binding against the Guarantor, including that Affiliate with that Ownership interest, acceptable to City.

11.05 Letter of Credit. Within 20 days of City direction, in lieu of providing a performance bond in accordance with Exhibit 11.03, Contractor will provide for the issuance of an irrevocable direct pay letter of credit (the "**Letter of Credit**") by a bank approved by the City in its sole discretion (the "**Bank**") for the benefit of the City, under which the City is authorized to draw, in one or more drawings, an aggregate amount up to the amount required for a performance bond as provided in Exhibit 11.03 (the "**Stated Amount**") upon the occurrence of an Event of Default or in the event that Contractor is unable to regularly pay its bills as they become due or fails to timely pay any Disposal Facility for disposal services provided under this Agreement, as evidenced to the satisfaction of the City. The expiration date of the Letter of Credit must be no less than the Term of this Agreement, including any extensions of this Agreement (the "**Stated Expiration Date**"). The Letter of Credit must expire on the date on which the Bank receives a certificate from the City saying that the Term has expired or this Agreement has been terminated and Contractor owes City no money thereunder,

or that Contractor has substituted an alternative letter of credit or other security document acceptable to City in City's sole discretion. The form of the Letter of Credit, including the procedures for and place of demand for payment and drawing certificate attached thereto, must be subject to approval of City in its sole discretion. The Letter of Credit must be transferable to any successor or assign of the City.

ARTICLE 12. CRIMINAL ACTIVITY

12.01 Criminal Activity

The Contractor will immediately notify the City upon the occurrence of any of the following events or circumstances listed in subsections a and b ("**Convictions or Pleas**") with respect to Contractor or any of its Contract Managers defined in paragraphs (1), (2) and (3) of subsection e, and use Reasonable Business Efforts to immediately notify the City with respect to Contractor or any of its Contract Managers defined below in paragraph (4) of subsection e:

a. Convictions, etc.: The Contractor or any of its Contract Managers defined in subsection e below, has a criminal conviction, permanent mandatory or prohibitory injunction, or a final judgment or order from a court, municipality or regulatory agency of competent jurisdiction with respect to the following ("**Criminal Activity**"):

(1) fraud or criminal offense other than offenses constituting infractions in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to recyclables, green waste, construction and demolition debris or solid waste services of any kind (including collection, hauling, transfer, processing, composting or disposal), including this Agreement ; or

(2) bribery or attempting to bribe a public officer or employee of a local, state, or federal agency by Contractor or by any Contract Manager in that Contract Manager's official capacity; or

(3) embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony; or

(4) unlawful disposal of hazardous or designated waste the occurrence of which the Contractor or any of its Contract Managers knew or should have known; or

(5) violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practice laws, including with respect to inflation of waste collection, hauling or disposal fees;

b. Pleas, etc.: The Contractor or any of its Contract Managers defined in subsection e has pled "guilty" or entered a plea of "nolo contendere" or "no contest" to Criminal Activity occurring within the City or relating to this Agreement.

c. Upon the occurrence of any Convictions or Pleas , the Contractor immediately will do or cause to be done both of the following:

(1) terminate from employment or remove from office the offending Contract Manager who is an individual, or, with respect to a Contract Manager that is the Contractor or Affiliates, the individual or individuals responsible for the Criminal Activity, *unless* otherwise directed or ordered by a court or regulatory agency of competent jurisdiction and/or authority, and *unless* termination would subject Contractor, an Affiliate or any of its Contract Managers to substantial liability for breach of any labor agreement entered into after the Commencement Date of this Agreement, and

(2) eliminate the participation by that Contract Manager who is an individual or, with respect to a Contract Manager that is the Contractor or Affiliates the individual or individuals responsible for the Criminal Activity, in any Position of Influence described in subsection e.

The City in its sole discretion may terminate the Agreement upon 30 days Notice to the Contractor, or may impose other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it will deem proper, if the following events:

(i) the Contractor or any Affiliate fails to comply with the foregoing obligation of this subsection c, or

(ii) the Criminal Activity (other than Criminal Activity described paragraph a(4) above which Contractor did not direct or of which Contractor did not have actual knowledge) is a felony, and concerns and is related to this Agreement.

Contractor must be given the opportunity to present evidence in mitigation during the preceding notice period and City considers that evidence.

d. The Contractor will not allow or cause to be allowed to hire or transfer from any Affiliate of any

employee, officer or director of an Affiliate who is the subject of any Conviction or Plea to a position as a Contract Manager.

e. For purposes of this Section, "Contractor or any of its Contract Managers" means

(1) the Contractor and its officers and directors,

(2) the officers and directors of Contractor's parent corporation and of each successive parent corporation's parent corporation, as listed on the attachment to Exhibit 3.01a as a Term Condition,

(3) the Contractor Representative, and

(4) any other Persons that or who have the authority or responsibility to directly or indirectly administer, manage, direct, supervise or oversee Services or this Agreement, *including* the following:

supplying goods or services; serving as director of the board of directors of Contractor and an Affiliate; serving as an officer of Contractor and an Affiliate; reviewing or negotiating Contractor's contracts (including this Agreement); providing in-house legal services; providing insurance or other performance security; and providing processing or disposal, but *excluding* the following:

monitoring Contractor's performance, supervising Contractor's finance and capital budget decisions and articulating general policies and procedures not related to Criminal Activity.

This authority and responsibility is defined as "**Position of Influence**".

ARTICLE 13. CONTRACTOR SERVICE FEES AND CUSTOMER RATES

13.01 Contractor's Compensation. In consideration of and as compensation for fully and timely performing Services, Contractor will be compensated the Service Fee payable solely from Rates. This Agreement is a service agreement and does not constitute indebtedness of the City in contravention of Applicable Law.

13.02 Customer Rates. "**Rates**" means amounts payable by Customers comprised of the Contractor's Service Fee, Solid Waste Management Fee and any City's Solid Waste Generation Fees. Contractor will supply City with a written schedule of Rates promptly upon City direction.

a. Service Fee. Contractor may establish the service fee payable by Customers upon agreement with the Customer.

b. Solid Waste Generation Fees. City in its sole discretion may establish and maintain Solid Waste generation fees (**"Solid Waste Generation Fees"**) payable by Customers, including fees to reimburse the City its cost of administering this Agreement, such as review and evaluation of Records and reports in accordance with Article 10 and evaluating Contractor's performance under this Agreement and compliance with the terms of this Agreement; of generally providing Solid Waste management services not provided by Contractor under this Agreement as necessary to protect public health and welfare and comply with Applicable Law, including AB 939 diversion programs; and of maintaining, repairing and replacing City infrastructure, including streets.

Contractor will include a written notice of all adjustments to and changes in Rates to Customers together with the first Customers' bill being mailed following that adjustment of change, which notice is submitted to the City for review no later than 5 days prior thereto.

13.03 Contractor Billing, Collection, Deposit and Disbursement of Customer Rates; Delinquencies.

a. Billing, Collection and Accounting of Rates. Contractor will bill and collect Rates in accordance with Section 4.09. Each month Contractor will record Contractor's estimate of the amount of accrued Solid Waste Management Fees collected by Contractor as part of Rates in a separate account within Contractor's detail general ledger. Contractor will title that account "SWM Fees Due to La Canada". Contractor is not required to report this information to the City, but City may audit this information in accordance with Section 10.01b.

b. Payment of Service Fee from Rates. Contractor will prepare and submit to the City an itemized invoice for the Service Fee at the same time it mails Customers' bills for Rates prepared by Contractor in accordance with Section 4.09 (**"Service Fee Invoice Date"**). Contractor will be compensated for that invoiced Service Fee from Rates on or after the 20th day of each month (the **"Service Fee Payment Date"**).

c. Delinquencies. Rates due and payable by Customers are a civil debt owing City from the Customer. City authorizes Contractor to take actions on behalf of City to enforce collection of unpaid Rates, including court action and use of collection agencies. Contractor may recover all reasonable cost and attorney's fees therefor in accordance with Applicable Law. Contractor releases the City from any liability for payment of any sum or sums now due, or hereafter becoming due, to Contractor for providing Services under this Agreement, except from Rates collected by Contractor

or in connection with property taxes in accordance with this subsection.

Contractor will use Reasonable Business Efforts to collect Rates that are Delinquent. Consistent with the City Code, Contractor may request City to lien Delinquent payments if: (1) the Customer is the owner of the property receiving Collection Services, (2) should a Customer be Delinquent, Contractor bills in advance, and (3) within one month of the Delinquent date, Contractor submits no more than one month's bill for Delinquent payments. (Items (1), (2) and (3) are referred to as "**Lien Preconditions**").

If Contractor meets Lien Preconditions, then in its Monthly Report Contractor may provide the City with a list of Customer accounts for the previous month that are one month Delinquent, together with (i) Contractor's representation and warranty that it used Reasonable Business Efforts to collect Rates that are Delinquent, (ii) evidence (such as a return receipt) that Contractor provided the owner Customer with Notice of Delinquent payments, and (iii) information that the City may request, including the address and assessor's parcel number of Customer's property being Serviced, the name of the Customer and the owner of the Serviced property, the time period during which Contractor rendered Service, and the unpaid amount ("**Delinquency Information**"). City may also direct Contractor to provide that information. Unpaid amounts and related costs of collection, penalties and interest will be a debt owed to the City. Following due adoption of provisions therefore in the City Code, City will elect to have Delinquencies for Services rendered in the previous month and related costs collected on the tax roll in accordance with Applicable Law, including Sections 5473 through 5473a of the California Health and Safety Code, and from time to time establish penalties thereon as permitted by Section 5473.10 of the California Health and Safety Code, and interest. Upon Contractor's submission of Delinquency Information, City will prepare reports of Rates that are Delinquent, give notice and hold public hearings, make final determinations and file the endorsed report on or before August 10 of each year in accordance with Section 5473 *et seq.*. Any collected monies will be allocated as follows:

(1) first, to the costs of collection (including City's Reimbursement Costs for preparing the reports, noticing and holding hearings, placing the Rates that are Delinquent on the tax roll and collecting and distributing the collected monies);
(2) second, to the City for that portion of the Rates that are Delinquent representing the City's unpaid Solid Waste Management Fee and any Solid Waste Generation Fee;

(3) third, to Contractor for that portion of the Rates that are Delinquent representing the Contractor's unpaid Service Fee; and

(4) fourth, to the City for any remaining balance.

The City is not liable to Contractor for any Delinquencies or interest thereon other than from the Service Fee and amounts collected as described in this subsection. The City need not elect to have Delinquencies for Services rendered prior to the previous month on the tax roll.

13.04 Solid Waste Management Fee.

a. Contractual Obligation.

(1) Amount. Contractor will pay City the quarterly solid waste management fee (the "**Solid Waste Management Fee**") as required by Section 9.12.020D of the City Code. Reference to Contractor's "gross receipts" in Section 9.12.020D is deemed to refer to gross Service Fees.

(2) Annual Review by CPA; Actual Payments. Within 120 days following the close of each Contract Year Contractor will furnish City with a statement showing and substantiating the amount of the Solid Waste Management Fee, both owed and paid. Contractor will cause that statement to be reviewed by Contractor's independent certified public accountant, acceptable to the City, in accordance with review standards of the accounting industry, and including the accountant's statement relative to his or her review. The accountant's statement will also be accompanied by a representation and warranty of an authorized financial officer of the Contractor, as follows: "I declare, under penalty of perjury of the laws of the State of California, that I am familiar with the financial transactions of the [INSERT NAME OF Contractor] and am responsible for keeping and maintaining its financial records, including gross receipts thereof, and I have reviewed the [INSERT DATE AND DESCRIPTION OF ACCOMPANYING FINANCIAL STATEMENT]. To the best of my knowledge and belief, the statement is true, correct and complete."

(3) City Audit. If an audit conducted by the City in accordance with Section 10.01b demonstrates that the Solid Waste Management Fee paid by Contractor to City for any Contract Year has been understated, then Contractor will pay the City the amount of the understated Solid Waste Management Fee plus interest thereon at 10 percent per annum from the date originally due until paid, within 30 days of submitting the results of the audit to Contractor.

b. Survival. CONTRACTOR'S OBLIGATIONS TO PAY AMOUNTS DUE AND OWING UNDER THIS SECTION WILL SURVIVE EXPIRATION OR TERMINATION OF THE AGREEMENT.

13.05 Contractor Payment of Moneys Due City. The City may demand payment from Contractor of, or draw on Contractor's performance bond of letter of credit for, any amounts due and owing by

Contractor to City, including:

(1) Damages: any unpaid damages, including under Section 14.01;

(2) Reimbursements: unpaid reimbursements of City's Reimbursement Costs of substitute performance or other costs under this Agreement, including clean up of litter in accordance with Section 4.03b; repair of damaged property in accordance with Section 4.03c; missed pickups in accordance with Section 4.03d; City's performance costs in accordance with Section 14.09; and payment of insurance premiums in accordance with Section 11.01d.

(3) Solid Waste Management Fees: any Solid Waste Generation Fee and Solid Waste Management Fees in accordance with Section 13.04.

ARTICLE 14. BREACHES, DEFAULTS AND REMEDIES

14.01 Certain Breaches and Liquidated Damages. In its Monthly Report, Quarterly Report and Annual Report, Contractor will certify to City that it has met its Service obligations during the respective month, quarter or year. If Contractor cannot so certify, if its complaint record evidences, or if the City Notifies Contractor that it has failed to meet any of its Service obligations, then Contractor will pay the following liquidated or compensatory damages for each of the corresponding breaches, as indicated:

(1) Failure to Properly Replace Container: failure to return emptied Container to its proper location in accordance with Section 4.03c(2) ($50 for 1-5 breaches; $100 for 6-10 breaches; $200 for 11-15 breaches and $500 for each breach in excess of 15 breaches in any Contract Year, in this Section referred to as "**Escalated Damages**");

(2) Failure to Clean Up Litter: failure to clean up litter spilled from Containers by Contractor's employees while emptying Containers in accordance with Section 4.03b (Escalated Damages);

(3) Excessive Noise: noise emission in excess of levels provided in Section 5.02a(3) (Escalated Damages);

(4) Collection Outside Permitted Hours: providing Service outside hours authorized in accordance with Section 4.01c (Escalated Damages);

(5) Failure to Record Complaint: failure to record a complaint in accordance with Section 4.05b ($100);

(6) Failure to Provide City Access to Complaint Records: failure to provide City access to records of complaints in accordance with Section 4.05b ($100 if not provided within 7 days of City request; $200 if not provided within 14 days of City request; $300 if not provided within 21 days of City request; $400 if not provided within 28 days of City request; and $500 for each week thereafter);

(7) Failure to Submit Reports to City: failure to timely submit complete reports to the City in accordance with Section 10.02 ($750);

(8) Failure to Deliver Solid Waste to Solid Waste Management Facilities: if the City in its sole discretion chooses not to exercise its right to terminate this Agreement in accordance with Section 14.01 in the event Contractor fails to deliver Refuse, Recyclables or C&D Debris to related Solid Waste Management Facilities in accordance with Section 6.01a and Section 7.01, then the Contractor will pay the City the City Reimbursement Costs to provide necessary persons who monitor Contractor's compliance with those delivery requirements, including following Contractor's vehicles on Service routes;

(9) Failure to Obtain City Approvals: failure to obtain any approval of the City required under this Agreement ($250);

Contractor will pay liquidated or compensatory damages in accordance with Section 13.05. Within 10 days of first receiving notice of breaches and damages from City, Contractor may contest imposition of damages by notice to the City, indicating the basis for disagreement. Contractor's obligation to pay damages WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

The Parties acknowledge that City incurred considerable time and expense procuring this Agreement in order to secure an improved level of collection service quality and increased Customer satisfaction. Therefore consistent and reliable Services are of utmost importance to the City and Customers. City has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Agreement, and Contractor's breach of its Service obligations referenced in this Section above represents a loss of bargain to the City. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable collection service, and if Contractor fails to meet Service obligations referenced in this Section above, City will suffer damages (including its Customers' inconvenience; potential political pressure, criticism and complaint by Customers; lost City Council and staff time; and loss of bargain) and that it is and will be impracticable and extremely difficult to ascertain and determine the value thereof. Therefore, the

Parties agree that the above liquidated damages represent a reasonable estimate of the amount of damages, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

14.02 Defaults. Each of the following will constitute an event of default (**"Event of Default"**) under this Agreement:

-Service Defaults:

(1) Failure to Collect Recyclables: Contractor fails to provide Recyclables Services for any Customer in accordance with Section 4.01a(2);

(2) Breach of Agreement: Contractor fails or refuses to perform any of its obligations under this Agreement, including breaches of provisions of the City Code that are incorporated in this Agreement as contractual performance obligations in accordance with Section 8.04; and

(i) the City Notifies Contractor that a specific failure or refusal has occurred which will, unless corrected, in City's opinion, give the City a right to terminate this Agreement; and the Contractor does not correct its breach within 20 days of receiving the City's Notice thereof; *provided* that if its breach is not capable of cure within 20 days, Contractor will promptly provide City Notice explaining why Contractor believes it needs additional time to effectuate a cure together with a schedule therefor, and will diligently proceed to cure the breach within that schedule, whereupon City, in its sole discretion, may (x) accept Contractor's schedule of cure; (y) make a written demand that Contractor cure the default within an alternative time period set by City, or (z) terminate this Agreement at the end of the 20 day period; or

(ii) the City Notifies Contractor that a type of failure or refusal has occurred repeatedly or habitually, whether or not specific instance of failure or refusal has been previously cured, which in City's opinion gives the City a right to terminate this Agreement;

(3) Failure to meet Minimum Diversion Requirement: Contractor fails to meet the Minimum Diversion Requirement.

(4) Failure to Comply With Law: Contractor fails to comply with Applicable Law in accordance

with Section 8.04 within 5 days' notice of Violation thereof;

(5) Failure to Deliver Materials to Designated Facility: Contractor fails to deliver Refuse, Recyclables or C&D Debris to the applicable Solid Waste Management Facility;

(6) Criminal Activity: The failure to timely terminate and/or replace any Contract Manager defined in Section 12.01 upon the occurrence of any conduct prescribed in Section 12.01;

(7) Failure to Timely Pay Solid Waste Management Fee: Contractor fails to pay any part of a any Solid Waste Generation Fee or the Solid Waste Management Fee within 15 days of the date it is due and payable;

-Performance Assurance Defaults

(8) Failure to Provide Performance Bond, etc.: Contractor fails to provide insurance, performance bond, Guaranty or letter of credit in accordance with Article 11;

(9) Failure to Allow City Right to Perform Services: Contractor fails to timely allow City to perform Contractor's Services in accordance with Section 14.09;

(10) Failure to Pay Damages: Contractor fails to pay City amounts due and owing the City at the time and in the manner provided in Section 13.05;

(11) Transfer, Assignment: Contractor sells, transfers or assigns its stock, assets and/or this Agreement without City approval required by Section 18.01;

(12) Seizure, Attachment: Any Service Asset is seized, attached or levied upon (other than a pre-judgment attachment) so as to substantially impair Contractor's ability to timely and fully perform Services, and which cannot be released, bonded or otherwise lifted within 48 hours, excepting weekends and Holidays;

(13) Insolvency, Bankruptcy, Liquidation: Contractor (i) files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, *unless* Contractor retains full control of Service Assets throughout the pendency of that claim, or (ii) consents to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of Service Assets no longer used to provide Services or backup Services), trustee (other than as security of an obligation under a deed of trust), custodian, sequestration, administrator (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or (iii) makes any general assignment for the benefit of

Contractor's creditors, or (iv) fails generally to pay Contractor's debts as they become due or (v) takes any action in furtherance of any of the foregoing;

(i) A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or (ii) Contractor consents to or fails to oppose any similar proceeding, or (iii) any court having jurisdiction enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, administrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of the Contractor;

-**(14) False Representations; Breach of Representations or Warranties**: Contractor makes a representation, certification or warranty herein or pursuant to this Agreement, including Exhibit 2.01, which Contractor knows, or in the course of diligently conducting business and providing Services should have known, is untrue as of the date thereof. Contractor makes a representation or fails to make a disclosure, whether within this Agreement or otherwise, to the City in connection with or as a material inducement to entering into this Agreement or any future amendment to this Agreement, which representation or failed disclosure is false or misleading in any material respect when made;

-**(15) Default under Financial Guaranty Agreement:** any default occurs under the Guaranty which default for failure to pay the guaranty listed in item (1) thereof is not timely cured as provided therein, and which default for breach listed in item (24)(b) thereof continues for the period provided therein.

14.03 Breaches and Defaults Excused

a. Performance Excused. Neither Party is deemed in breach or default of its duties, obligations (other than a payment obligation at the time due and owing), responsibilities or commitments under this Agreement to the extent that the breach or default is due to an Uncontrollable Circumstance, if that Party exerted Reasonable Business Efforts to prevent the occurrence and mitigate the effects of the Uncontrollable Circumstance.

b. Notice. The Party experiencing an Uncontrollable Circumstance and relying thereon will give immediate Notice thereof to the other Party, including describing performance under this Agreement for which it seeks to be excused; the expected duration of the Uncontrollable Circumstance; the extent Services may be curtailed; any requests or suggestions to mitigate the adverse effects of the Uncontrollable Circumstance; or any extension of the initial roll-out date for Recyclables Carts or Bins listed in Section 4.01a(2). If the Parties cannot agree upon these matters, either Party may seek determination by the Independent Expert in accordance with Section 9.03.

c. City's Rights. Notwithstanding that Contractor's failure to timely and fully provide Services due to Uncontrollable Circumstances does not constitute an Event of Default, following the continuance of its failure for 48 hours City will nevertheless retain the right, exercised in its sole discretion, to perform Services itself in accordance with Section 14.09, and following the continuance of its failure for 30 days, retains its right, in its sole discretion, to suspend or terminate the Agreement as provided in Section 14.04a.

14.04 Remedies Upon Default

a. Termination: to terminate this Agreement or any portion of the Contractor's Service obligations in accordance with Section 15.01a;

b. Suspension: to suspend the Agreement in accordance with Section 15.01b;

c. City Right to Perform Services: to perform Contractor's Services in accordance with Section 14.09;

d. All Other Available Remedies: to exercise its remedies of damages (including damages in accordance with Section 14.01) and any other available remedies at law and in equity (including specific performance). Prior to instituting any court proceeding, the City may require dispute mediation in accordance with Article 16.

Contractor acknowledges that City's remedy of damages for a breach of this Agreement by Contractor in accordance with this Section may be inadequate for reasons including:

(1) the urgency of timely, continuous and high-quality Solid Waste management service under this Agreement, including collection, transportation and/or transfer for disposal of putrescible wastes which constitute a threat to public health;

(2) the long time and significant investment of money and personnel (both City staff and private consultants, including procurement counsel and elected City officials) required to develop the City's Commercial Solid Waste program and performance standards, prepare this Agreement, solicit comments from Persons permitted to collect solid waste in the City, meet with those Persons to reach consensus on the terms and provisions of this Agreement, finalize this Agreement and conform the City Code to the new Solid Waste programs; and

(3) the City's reliance on Contractor's technical Solid Waste management expertise.

Consequently, City is entitled to all available equitable remedies, including injunctive relief.

Without limiting City's general right to seek injunctive relief described in this subsection above, Contractor further acknowledges that the City's remedy of damages for a breach of Sections 6.01a and 7.01 by Contractor and the Event of Default (Failure to Deliver Materials to Solid Waste Management Facility) in item (5) of Section 14.02 may be inadequate and, consequently, the City is entitled to all available equitable remedies, including specific performance and injunctive relief, for the following reasons:

(1) failure of Contractor to transport and deliver all Refuse, Recyclables and C&D Debris to the applicable Solid Waste Management Facility (a "**Delivery Default**") may subject Customers to consequent increased tipping fees and transportation costs, resulting in Rate increases to Customers;

(2) a Delivery Default may subject City to increased risk of liability for environmental damage due to release or threatened release of hazardous or toxic substances, petroleum products and other materials, including water or ground water contamination therefrom; replacement or restoration of natural resources arising therefrom; and repair, cleanup or detoxification of the non-approved disposal facility and any removal, remedial, response, closure or other plan with respect thereto, whether under Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 U.S. C. Section 9607(e) or California Health and Safety Code Section 25364 or otherwise;

(3) a Delivery Default may adversely effect City's ability to measure the Minimum Diversion Requirement and secure AB 939 compliance;

(4) a Delivery Default is not in the best economic, health and safety interest of Customers.

14.05 Remedies not Exclusive. Each Party's rights and remedies in the event of the other Party's breach and default under this Agreement are not exclusive. A Party's exercise of one remedy, including damages in accordance with Section 14.01, is not an election of remedies but is cumulative with any other remedies under this Agreement.

14.06 Waivers

a. City Waiver of Breach. City's waiver of any breach or Event of Default will not be deemed to be a waiver of any other breach or Event of Default including ones with respect to the same obligations under this Agreement. The City's decision not to demand damages in accordance with

Section 14.01 will not be deemed a waiver of any Contractor breach of Event of Default under this Agreement. City's subsequent acceptance of any damages or other money paid by Contractor, including damages under Section 14.01, will not be deemed to be a waiver by City of any pre-existing or concurrent breach or Event of Default.

b. Contractor Waiver of Certain Defenses. Contractor acknowledges that it is solely responsible for providing Services and by this Agreement irrevocably and unconditionally waives defenses to the payment and performance of its obligations under this Agreement based upon failure of consideration; contract of adhesion; impossibility or impracticability of performance; commercial frustration of purpose; or the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of Contractor with regard to any provision of this Agreement; *provided* that Contractor does not by this Agreement waive any defenses of Uncontrollable Circumstances.

14.07 Jurisdiction; Venue. Parties will bring any lawsuits arising out of this Agreement in State courts, which will have exclusive jurisdiction over those lawsuits. The Parties agree that venue is made in and will be performed in courts sitting in the City of Los Angeles. Parties further agree that the site of any other hearing or action, whether arbitration or non-judicial, of whatever nature or kind regarding this Agreement, is conducted in the City of Los Angeles.

14.08 Costs Contractor agrees to pay to the City's Reimbursement Costs reasonably incurred by or on behalf of the City enforcing payment or performance of Contractor's obligation under this Agreement if non-payment or non-performance results in an Event of Default by Contractor.

14.09 City Right to Perform Services

a. Events. City may perform, or contract for the performance of, any or all of Contractor's Service obligations, including the collection of Solid Waste or any portion thereof and transportation and delivery to a City-approved or designated processing facility or disposal facility, as the case may be, upon the occurrence of either of the following events, determined by City in its sole discretion:

(1) Contractor, due to Uncontrollable Circumstances or for any reason whatsoever, fails, refuses or is unable for a period of 48 hours to collect or at any time to transport Recyclables, Refuse or C&D Debris or any portion thereof to the applicable Solid Waste Management Facility and the City Representative determines in its sole discretion that there is a danger to the public health, safety or welfare; or

(2) the City suspends any portion of Contractor's Service obligations or terminates this Agreement due to a Termination Event.

City has no obligation to continue providing Services and may at any time, in its sole discretion, cease to provide Services. However City's right to provide Services will continue until Contractor can demonstrate to the City's satisfaction that Contractor is ready, willing and able to resume timely and full Service or until the City can make alternative arrangements for providing Solid Waste management services comparable to Services in scope and price, which may include contracting with another service provider.

b. Notice. The City may give Contractor 24 hour oral notice that City is exercising its right to perform Services, which notice is effective immediately, and will confirm that oral notice with a written Notice within another 24 hours thereafter.

c. Containers. Upon giving Contractor oral notice, City may to take possessory interest in any or all of the Contractor's Containers necessary or convenient in providing Services, and Contractor will fully cooperate with City to transfer possessory interest in Containers to the City. The City may use Containers to provide all or a portion of Services. City will have absolute and exclusive control over Containers as though the City were the absolute owner thereof, subject to actual possession by Customers.

Contractor will maintain in full force and effect all insurance required in accordance with Section 11.01 during City's possession of Containers.

City has no obligation to continue possession or use of Containers and may at any time, in its sole discretion, cease possession and/or use. However City's right to possess and use Containers will continue until Contractor can demonstrate to the City's satisfaction that Contractor is ready, willing and able to resume timely and full Service; until the City can make alternative arrangements for providing Solid Waste services comparable to Services in scope and price, which may include terminating all or a portion of this Agreement in accordance with Section 15.01 and contracting for related Services with another service provider.

d. Contractor's Personnel. Upon giving Contractor oral notice in accordance with subsection b, the City may immediately engage personnel necessary or convenient for providing all or a portion of Services, including employees previously or then employed by Contractor. However City will not be obligated to hire Contractor's employees and may use municipal employees or other Persons to provide all or a portion of Services. Promptly upon City request, Contractor will make available to the City all Contractor's management and office personnel necessary or convenient for providing

Services, including customer services and billing, at the cost, if any, provided in subsection f.

e. Records. Upon City request, Contractor will promptly provide City with immediate access at an office of Contractor located in Los Angeles County during Phone Hours or possession of any or all Records, including those related to routing and billing.

f. Contractor Payment or City Reimbursement.

(1) Uncontrollable Circumstances. If the events enumerated in paragraphs numbered (1) and (2) in subsection a are due to Uncontrollable Circumstances, then City will pay Contractor any of the following costs if Contractor is not then being compensated for Services through charging and collecting Service Fees from Customers:

(i) rental fees for City's use and possession of Containers equal to fair market value thereof as determined by an independent appraiser selected by the Parties in accordance with Section 15.02a;

(ii) Contractor's Direct Cost of making available to City management and office personnel in accordance with subsection d.

(2) Contractor Breach or Event of Default. If the events enumerate in paragraphs numbered (1) and (2) in subsection a above are not due to Uncontrollable Circumstances, then Contractor will pay the City the City's Reimbursement Costs of performing Contractor's Service obligations within 10 days of City's submitting an invoice therefor. If Contractor does not so timely pay, City may draw upon any performance bond, Guaranty or other security provided under this Agreement.

g. Stipulations. Contractor agrees and stipulates that the City's exercise of rights under this Section does not constitute a taking of private property for which City must compensate Contractor; will not create any liability on the part of City to Contractor; and does not exempt Contractor from any Indemnifications, which Parties acknowledge are intended to extend to circumstances arising under this Section. However, Contractor is not required to indemnify City against claims and damages arising from the negligence of City officers and employees (other than employees of Contractor at the time City commenced performing Services) and agents driving collection vehicles.

ARTICLE 15. SUSPENSION OR TERMINATION

15.01 City Right to Suspend or Terminate

a. Termination Events. City may in its sole discretion terminate this Agreement in whole, or by directing Contractor to cease performing any portion or item of its Services in Section 4.01a, in part, in the following events:

(1) **Contractor Default**: the occurrence of an Event of Default;

(2) **Uncontrollable Circumstances**: the occurrence and continuance of an Uncontrollable Circumstance in accordance with Section 14.03c;

(3) **Non-Severable Provisions**: any clause, sentence, provision, subsection, Section or Article of this Agreement or Exhibit to this Agreement is ruled invalid by any court of competent jurisdiction but is not severable here from in accordance with Section 1.05;

(4) **Assignment of Guaranty Without Consent:** the Guarantor assigns the Guaranty without consent required by Section (3) of the Guaranty despite City Council action denying City consent, and on or before 15 days thereafter, the Guarantor does not provide City with a substitute Guarantor or alternative financial credit support satisfactory to City;

(5) **Failure to timely submit documentation:** Contractor fails to timely submit documentation satisfactory to City as described in Section 3.01a.

b. Suspension Events. City may in its sole discretion suspend this Agreement, in whole in or in part, upon the occurrence of Termination Events listed in subsection a, *provided* suspension is for no longer than 30 days, during which period the Contractor will have the opportunity to demonstrate to the satisfaction of the City that Contractor can once again fully perform Services. If Contractor so demonstrates, the City's right to suspend or terminate the Agreement will cease and Contractor may resume providing Services. If Contractor does not so demonstrate, the City may terminate the Agreement and exercise any other rights and remedies under this Agreement.

c. Notice. City will give Contractor Notice of termination effective:

(1) immediately with respect to Events of Default described in item (8) of Section 14.02 (Failure to Provide Performance Bond, etc.); subsection a(5) (Failure to timely submit documentation) of this Section 15.01; and, to the extent permitted by Applicable Law, item (13) of Section 14.02a (Insolvency, Bankruptcy, Liquidation), and

(2) upon Contractor's receipt of Notice with respect to all other Events of Default and occurrence of all other events listed in subsection a.

d. Suspension, Termination of a Portion of Performance Obligations: Reduction in Fee. In the event the City suspends a portion of this Agreement or terminates a portion of Contractor's Service obligations, Contractor will continue to fully perform its obligations under the remaining portions of this Agreement which are not suspended or terminated, and will adjust the Service Fee to the satisfaction of City in order to reflect actual reductions in Services. For example, if City suspends Contractor's Service obligations with respect to Collection of Recyclables upon the occurrence of one or more events listed in subsection a above, Contractor would be obligated to fully perform its other obligations under this Agreement, such as Refuse Collection.

15.02 Contractor's Obligations Upon Termination

a. Use and/or Purchase of Recyclables Carts. Upon effectiveness of the City's Notice of termination in accordance with Section 15.01c, City may purchase and take possession of all or a portion of Recycling Carts at a price equal to the greater of (1) the then book value of Reyclables Carts amortized straight-line over a 10 year life, or (2) fair market value determined by an independent appraiser selected by City and Contractor as described in this subsection, which RIGHTS WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.
Each Party will prepare a separate list of 5 independent appraisers having experience in refuse and recycling collection, in numerical order with the first preference at the top, and exchange and compare lists. The independent appraiser ranking highest on the 2 lists by having the lowest total rank order position on the 2 lists will make that appraisal. In case of a tie in scores, the independent appraiser having the smallest difference between the rankings of the 2 parties is selected; other ties is determined by a coin toss. If no independent appraiser appears on both lists, this procedure is repeated. If selection is not completed after the exchange of 2 lists or 60 days, whichever comes first, then each Party will select one independent appraiser having experience described above and the 2 appraisers so selected will together select an independent appraiser. Parties will share the costs of the independent appraiser equally.

b. Pay Due and Payable Amounts Owed City and Customers . Contractor will pay City any damages, including damages payable in accordance with Section 14.01, and any other amounts due and payable City or any Customer accrued and payable during the then current Contract Year. CONTRACTOR'S LIABILITY FOR PAYMENTS WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

c. Cooperation During Transition. In the event Contractor is not awarded an agreement to continue to provide services following the expiration or earlier termination of this Agreement, Contractor will cooperate fully with City and any subsequent contractor(s) to assure a smooth transition of services, including transfer of Records upon direction of the City; providing other reports

required by this Agreement; and coordinating with City and any subsequent contractor(s) with respect to pickup of Bins and of Recyclables Carts not purchased by City. With respect to that pickup, Contractor will not remove a Container from any Customer's premises until the earlier of: (1) the date replacement containers are provided to the Customer or (2) 2 months after the expiration or termination of this Agreement. THESE OBLIGATIONS OF CONTRACTOR WILL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

ARTICLE 16. DISPUTE MEDIATION

16.01 Non-binding Mediation

a. By the Parties and Independent Mediator. In the event of disputes under this Agreement, other than disputes with respect to Uncontrollable Circumstances and changes in the scope of Services subject to resolution by the Independent Expert in accordance with Section 9.03, by Notice either Party may direct the other Party to meet at a mutually convenient place and time within 7 days of Notice in order to attempt to resolve the dispute. If the Parties cannot resolve the dispute within 10 days following that meeting, by Notice either Party may name 2 mediators in accordance with subsection b and direct the other Party to do so also, and upon selection thereof, refer the dispute to an Independent Mediator for advice and non-binding mediation. Both Parties will cooperate, using at a minimum Reasonable Business Efforts, with the Independent Mediator. If the Independent Mediator cannot resolve the dispute within 30 days following the referral, either Party may resort to proceedings at law or equity.

b. Selection. Together with its Notice referring a dispute to mediation in accordance with subsection a, the Party referring the dispute will list 2 mediators or other professional having substantial experience with refuse and recycling collection in numerical order with the first preference at the top. The Party receiving the Notice will promptly also prepare and exchange that list. The mediator ranking highest on the 2 lists by having the lowest total rank order position on the 2 lists is the Independent Mediator. In case of a tie in scores, the Independent Mediator having the smallest difference between the rankings of the 2 parties is selected; other ties is determined by a coin toss. If no mediator appears on both lists, this procedure is repeated. If selection is not completed after the exchange of 2 lists or 10 days, whichever comes first, then each Party will select one mediator having experience described above and the 2 mediators so selected will together select an Independent Mediator.

c. Costs. Parties will share the costs of the Independent Mediator as determined by the Independent Mediator.

d. Non-binding Mediation Protocol. Upon either Party's referral to an Independent Mediator in accordance with subsection a, the Parties will each give the Independent Mediator a Notice detailing the dispute together with a written statement of each Party's position thereon. Parties will simultaneously exchange copies thereof. Both Parties will, in good faith and in writing, promptly provide the Independent Mediator with any and all additional information and documentation the Independent Mediator requires or requests in order to make its determination and simultaneously provide the other Party with copies thereof. Neither Party will communicate orally with the Independent Mediator *unless* the other Party is privy thereto. Neither Party will communicate in writing with the Independent Mediator *unless* it simultaneously sends copies of that communication to the other Party, in the same manner that it sends that communication to the Independent Mediator.

The Independent Mediator will make its determination based on the submissions of the Parties, the provisions of this Agreement, its experience with similar services and disputes, and other factual determinations it may make regarding the matter in dispute. Its determination is non-binding.

16.02 Parties' Obligations During Pendency of Dispute. During pendency of any dispute, whether under Article 13 or otherwise, the Parties will perform their respective obligations under this Agreement, including payment of monies due and payable.

ARTICLE 17. THE PARTIES

17.01 Contractor Is Independent Contractor. Contractor will perform Services as an independent contractor engaged by City and not as officer, agent, servant, employee or partner of City or as a joint venture with City. No employee or agent of Contractor is deemed to be an employee or agent of City. Contractor will have the exclusive control over the manner and means of performing Services and over all Persons performing Services, *except* for City's right to change the scope of Services in accordance with Article 9. Contractor is solely responsible for the acts and omissions of its officers, employees, contractors, subcontractors and agents, none of whom is deemed to be an officer, agent, servant, employee of the City. Neither Contractor nor its officers, employees, contractors, subcontractors and agents will obtain any rights to retirement benefits, workers compensation benefits, or any other benefits which accrue to City employees and Contractor expressly waives any claim it may have or acquire to those benefits.

17.02 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to

confer any rights on any Persons other than the Parties and representatives, successors and permitted assigns.

17.03 Binding on Successors. The provisions of this Agreement will inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

17.04 Further Assurances. Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

17.05 Actions of the City in Its Governmental Capacity. Nothing herein is interpreted as limiting the rights and obligations of the City in its governmental or regulatory capacity. However, the Parties intend that the City's designation of any Solid Waste Management Facility is an exercise of the City's contractual rights and not a governmental or regulatory action.

17.06 Contractor's Obligations Performed at Its Sole Expense. Contractor will perform Services solely for the compensation expressly provided for herein.

17.07 Parties Representatives

a. City Representative. The City Representative is the Deputy Director (Solid Waste) of the Public Works Department unless otherwise named from time to time upon Notice of City to Contractor, who is authorized to act on behalf of City in the administration of this Agreement, unless another Person is specifically authorized herein.

b. Contractor Representative. The Contractor Representative is named in the attachment to Exhibit 3.01a as a Term Condition, as may be changed from time to time upon Notice of City to Contractor in accordance with Section 3.03b, is authorized to act on behalf of Contractor in the performance under this Agreement. Contractor Representative is a key personnel named in accordance with Section 5.05a. The Contractor Representative must have at least 5 years experience in Solid Waste collection services prior to being named Contractor Representative.

17.08 Due Diligence. Contractor acknowledges that the City may be subject to statutory fines for

failure to achieve mandated diversion levels and that waste management is a public health and safety concern. It agrees that it will exercise due diligence in performing Services under this Agreement.

17.09 No Use of City Name. Contractor will not do business as or use a corporate, partnership, venture or other formal name, containing the words "La Canada Flintridge" or implying municipal ownership.

ARTICLE 18. ASSIGNMENT AND AMENDMENTS

18.01 Assignment

a. City Assignment. The City reserves the right to assign this Agreement to a sanitation district, joint power authority or other public entity succeeding to the major portion of the City's solid waste management rights and obligations. The City may also assign this Agreement to any other Person upon City's determination that the assignee is financially capable of meeting the City's obligations under this Agreement.

b. Contractor Assignment. Contractor acknowledges that Contractor has submitted evidence to City required by Section 9.12.030 of the City Code with respect to Contractor's qualifications to provide Solid Waste Collection Services, and that Contractor's Services are personal in nature. Contractor will not Assign any of Contractor's rights nor delegate any of Contractor's duties under this Agreement without the prior consent of City given in its sole discretion. Any assignment made without the consent of City is void and constitute an Event of Default under item (11) of Section 14.02. Contractor will undertake to pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required by the City as a condition for approving any assignment.

18.02 Amendments. The Parties may change, modify, supplement or amend this Agreement only upon mutual written agreement duly authorized and executed by both Parties. Party Representatives may take actions that the Agreement authorizes them to take, including amending protocols, lists, inventories, and other documentation provided in the Exhibits, without approval by their respective Board of Directors or other governing Person, authority or City Council pursuant to resolution or otherwise.

ARTICLE 19. NOTICES, CONSENTS, APPROVALS, ETC.

19.01 Notices, etc.. All reports, demands, requests, directions, selections, option exercises, orders, requests, proposals, reviews, comments, acknowledgments, approvals, agreements, consents, waivers, certifications and other communications made under this Agreement is in writing and will either be sent by *facsimile* or 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 (certified mail, return receipt requested) or by commercial delivery service providing delivery verification, addressed as follows:

If to City: Director of Public Works
City of La Canada Flintridge
1327 Foothill Boulevard
La Canada Flintridge, CA 91011-2137

If to Contractor: at the address attached to Exhibit 3.01a as item 17.07.

provided that any facsimile is promptly followed by personal or mailed delivery.

Notice by City to Contractor of a missed pick-up or a Customer problem or complaint may be given to Contractor orally by telephone at Contractor's local office with written confirmation sent to Contractor within 24 hours of the oral notification.

Parties may change their address or add a fax number or Email address upon Notice to the other Party as provided above.

19.02 Exercise of Options. Except as otherwise provided, the Parties' exercise of any approval, disapproval, option, discretion, satisfaction, determination, election, consent or choice (together, "Option") under this Agreement is reasonable and Parties will not unreasonably withhold any approval or consent *unless* this Agreement specifically provides otherwise, including in each respective Party's independent, sole, exclusive and absolute control or judgment, or discretion. Parties nevertheless agree to act in good faith as required by Applicable Law.

ARTICLE 20. EXECUTION OF AGREEMENT

20.01 Execution in Counterparts. This Agreement may be executed in any number of original counterparts. All counterparts will constitute but one and the same Agreement.

20.02 Authority to Execute . City warrants that the officers listed below have been duly authorized by the City to execute this Agreement on behalf of the City. Contractor warrants that the individuals listed below have been duly authorized by the Contractor to execute this Agreement on behalf of the Contractor.

CITY OF LA CANADA FLINTRIDGE, CALIFORNIA, a municipal corporation
By: _____
Name: Anthony J. Pantuano
Title: MAYOR
Dated: _____

ATTEST:

_____
CITY CLERK
Dated: _____

APPROVED AS TO FORM:

_____
CITY ATTORNEY
Dated: _____

CONTRACTOR
Name: _____
By: _____
Name: _____
Title: _____
Dated: _____

ATTEST:

_____
Dated: _____

Parties may change their address or add a fax number or Email address upon Notice to the other Party as provided above.

19.02 Exercise of Options. Except as otherwise provided, the Parties' exercise of any approval, disapproval, option, discretion, satisfaction, determination, election, consent or choice (together, "Option") under this Agreement is reasonable and Parties will not unreasonably withhold any approval or consent *unless* this Agreement specifically provides otherwise, including in each respective Party's independent, sole, exclusive and absolute control or judgment, or discretion. Parties nevertheless agree to act in good faith as required by Applicable Law.

ARTICLE 20. EXECUTION OF AGREEMENT

20.01 Execution in Counterparts. This Agreement may be executed in any number of original counterparts. All counterparts will constitute but one and the same Agreement.

20.02 Authority to Execute. City warrants that the officers listed below have been duly authorized by the City to execute this Agreement on behalf of the City. Contractor warrants that the individuals listed below have been duly authorized by the Contractor to execute this Agreement on behalf of the Contractor.

CITY OF LA CANADA FLINTRIDGE, CALIFORNIA, a municipal corporation
By: _____
Name: Arthur T. Portmbno
Title: MAYOR
Dated: 11-28-01

ATTEST:
_____
CITY CLERK
Dated: 11-29-01

APPROVED AS TO FORM:
_____
CITY ATTORNEY
Dated: 11/30/01

CONTRACTOR
Name: S.W.R.D. INC
By: _____
Name: KIRK SIMONIAN
Title: PRESIDENT
Dated: 11-20-01

ATTEST:
_____
Dated: 11-20-01

11-19-01 execution copy

ASSIGNMENT CONSENT

The City of La Canada Flintridge (the "**City**") and Arakelian Enterprises, Inc. DBA Athens Services (the "**Assignee Contractor**") enter into this agreement (the "**Consent Agreement**") on the latter of the dates noted below those parties' signatures.

RECITALS

SWRD, Inc. DBA Solid Waste Recycling and Disposal (the "**Original Contractor**")and the City of La Canada Flintridge (the "**City**") entered into the SERVICE AGREEMENT FOR RESIDENTIAL SOLID WASTE, RECYCLABLES AND GREEN WASTE COLLECTION, DISPOSAL, PROCESSING AND COMPOSTING" (the "**Residential Agreement**") and the SERVICE AGREEMENT FOR COMMERCIAL SOLID WASTE AND RECYCLABLES AND C&D Debris COLLECTION, DISPOSAL AND PROCESSING" (the "**Commercial Agreement**", and together with the Residential Agreement, the "**Agreements**") dated as of the later of the date of execution thereof by the City or the Original Contractor.

Following acquisition of the Assignee Contractor's acquisition of Original Contractor, the Assignee Contractor has requested the City to consent to the Assignment (as defined in the Agreements) of the Agreements to the Assignee Contractor.

On June 19, 2006, City Council authorized the City Manager the City Manager to consent to SWRD's request to approve SWRD's "assignment" of the commercial and residential solid waste collection contracts to Athens Services, Inc., upon completion to the satisfaction of the Director of Public Works the following preconditions:

1) execution by Athens of assignment acceptance in form satisfactory to the Director;
2) payment of any solid waste management fees due and payable by Solid Waste to the City or estimated to become due and payable prior to City's execution of assignment consent;
3) reimbursement of City's costs to consider Solid Waste's assignment request and implement the assignment;
4) completion of documentation required by Exhibit 3.01a of the commercial and residential agreements, including execution of the affiliate guaranty appended to the agreements; and
5) satisfaction of additional actions identified by the Director necessary in his opinion to protect the health and safety of the residents and businesses of the City.

The Assignee Contractor has met those preconditions, including submitting to the City amended insurance endorsements, certificates of insurance, letters of credit and other assurances of performance reflecting substitution of Assignee Contractor for Original Contractor, and other documentation in form satisfactory to the City.

The City is willing to approve the Assignment to the Assignee Contractor, which is a limited liability corporation, if, among other conditions, the Assignee Contractor executes this Consent Agreement.

NOW, THEREFORE, in consideration of the City's consent and Assignee Contractor's obligations in this Consent Agreement, the parties agree as follows:

1. Assignee Contractor will become a party to the Agreement as if it were a signatory to the Agreement. Assignee Contractor will perform all Services (as defined in the Agreement). Assignee Contractor will comply with and by bound by all terms and conditions of the Agreement. Assignee Contractor assumes all obligations, duties, responsibilities and liabilities of Original Contractor's under the Agreement, including those accrued and outstanding as of the date of this Consent. The Agreement remains in full force and effect and is not amended by this Consent.

2. Assignee Contractor represents and warrants as provided in Exhibit 2.01 of the Agreement (except for paragraph c with respect to Procurement Proceedings) , as of the date of this Consent. Assignee Contractor further represents and warrants that documentation submitted to the City in connection with this Consent is correct and complete in all materials respects including:

- Athens's letter to the City dated November 22, 2005, together with attached overview, reference list and safety information; and
- Athens' letter to the City dated August 1, 2006, together with attachments.

3. City consents to Assignment. The City consents to the Assignment of the Agreement to Assignee Contractor.

4. Miscellaneous terms and conditions.

a. Execution in Counterparts. This Consent may be executed in any number of original counterparts. All counterparts will constitute but one and the same agreement.

b. Parties in Interest.. Nothing in this Consent, whether express or implied, is intended to confer any rights on any persons or entities other than the parties and representatives, successors and permitted assigns.

c. Binding on Successors. The provisions of this Consent will inure to the benefit of and be binding on the successors and permitted assigns of the parties.

d. Further Assurances. Each party will execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Consent.

e. Jurisdiction. The parties will bring any lawsuits arising out of this Consent in courts of the State of California, which will have exclusive jurisdiction over those lawsuits. The site of any other hearing or action, whether arbitration or non-judicial, of whatever nature or kind regarding this Agreement, will be conducted in the City of Los Angeles, California.

e. Venue. To the extent permitted by law, venue will be made and performed in courts sitting in the City of Los Angeles, California.

f. Costs and Expenses. Contractor will pay to the City the City's Reimbursement Costs (as defined in the Agreement) reasonably incurred by or on behalf of the City enforcing payment or performance of Contractor's obligation sunder this Consent, including attorneys' fees.

g. Integration. This Consent contains the entire agreement between the parties with respect to the rights and responsibilities of the parties under this Consent, including the enforcement and administration of this Consent. This Consent completely and fully supersedes all prior understandings and agreements between the parties with respect to those rights and responsibilities, including those contained in prior letters.

h. Governing Law. This Consent is governed by, and construed and enforced in accordance with, the law of the California, without giving effect to California's principles of conflicts of laws.

IN WITNESS WHEREOF, the PARTIES to this Consent have executed this Consent as of the latter of the date written below.

THE CITY OF LA CANADA FLINTRIDGE

By: MARIE R. ALEXANDER, CITY MANAGER
Date:

ATTEST:

ARAKELIAN ENTERPRISES, INC.. DBA Athens Services

By: ERIC D. HERBERT, PRESIDENT
Date: MARCH 13, 2007

ATTEST: