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**AGREEMENT FOR  
COMMERCIAL REFUSE and RECYCLING  
COLLECTION and DISPOSAL SERVICES**

**Executed between the  
City of Commerce and**

**Arakelian Enterprises, Inc.  
dba Athens Services**

**Awarded: October 2, 2018**

**Effective: November 1, 2018**

## TABLE OF CONTENTS

SECTION 1.	DEFINITIONS .....	5
SECTION 2.	SEMI-EXCLUSIVE GRANT OF PRIVILEGE TO ARRANGE FOR THE COLLECTION OF SOLID WASTE AND RECYCLABLE MATERIALS. ....	9
SECTION 3.	TERM.....	11
SECTION 4.	COMPLIANCE WITH LAWS AND REGULATIONS .....	11
SECTION 5.	SERVICES PROVIDED BY CONTRACTOR .....	11
SECTION 6.	TYPES AND FREQUENCY OF SERVICE.....	14
SECTION 7.	COLLECTION EQUIPMENT .....	16
SECTION 8.	PRIVACY.....	18
SECTION 9.	SERVICE EXCEPTIONS; HAZARDOUS WASTE NOTIFICATIONS...	18
SECTION 10.	CUSTOMER SERVICE.....	18
SECTION 11.	CONTRACTOR PROVIDED PUBLIC EDUCATION AND PUBLIC AWARENESS	19
SECTION 12.	OWNERSHIP OF SOLID WASTE.....	20
SECTION 13.	RATES AND BILLING.....	20
SECTION 14.	DIVERSION REQUIREMENTS AND GUARANTEE .....	21
SECTION 15.	CONTRACTOR'S BOOKS AND RECORDS. ....	22
SECTION 16.	REPORTS AND INFORMATION.....	23
SECTION 17.	INDEMNIFICATION AND INSURANCE.....	24
SECTION 18.	PERFORMANCE BOND .....	26
SECTION 19.	EMERGENCY SERVICE. ....	27
SECTION 20.	ADMINISTRATIVE REMEDIES; TERMINATION.....	28
SECTION 21.	QUALITY OF PERFORMANCE OF CONTRACTOR.....	30
SECTION 22.	FINANCIAL AUDITS .....	31
SECTION 23.	MODIFICATIONS TO THE AGREEMENT .....	31
SECTION 24.	FRANCHISE TRANSFER; CITY CONSENT; FEES. ....	32
SECTION 25.	GENERAL PROVISIONS.....	32
SECTION 26.	FINANCIAL INTEREST .....	35
SECTION 27.	TRANSITION TO NEXT CONTRACTOR.....	35
SECTION 28.	SEVERABILITY.....	35

This Agreement for **Commercial Refuse and Recycling Services** ("Agreement") with an effective date of November 1, 2018, is entered into by and between the **CITY OF COMMERCE** ("City"), a California municipal corporation and charter city, and **Arakelian Enterprises, Inc. dba Athens Services** ("Contractor"), a California corporation, for the collection, transportation, recycling, composting and disposal of Commercial Solid Waste, including food waste, green waste and all other recyclable materials.

### RECITALS

**WHEREAS**, Article XI, § 7 of the California Constitution authorizes cities to protect the public health and safety by taking measures in furtherance of their authority over police and sanitary matters; and

**WHEREAS**, California Public Resources Code § 40059 provides that aspects of solid waste handling of local concern include but are not limited to frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste services, and whether the services are to be provided by means of nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise which may be granted by local government under terms and conditions prescribed by the governing body of the local agency; and

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

**WHEREAS**, the Legislature of the State of California, by enactment of its California Global Warming Solutions Act of 2006 ("AB 32"), requires that commercial generators statewide participate in recycling programs; and

**WHEREAS**, the Legislature of the State of California, by enactment of Assembly Bill 341 ("AB 341") adopted a goal that seventy-five percent of solid waste generated state-wide be diverted from landfill by the year 2020. Furthermore, AB 341 requires that each commercial solid waste generator, including multi-family dwellings of five or more units, provide for recycling programs, and each City or County implement recycling programs for commercial solid waste generators, including multi-family dwellings of five or more units; and

**WHEREAS**, the Legislature of the State of California, by enactment of Assembly Bill 1594 ("AB 1594") eliminates cities and counties from receiving landfill diversion credit from green waste being used as Alternative Daily Cover effective January 1, 2020; and

**WHEREAS**, the Legislature of the State of California, by enactment of Assembly Bill 1826 ("AB 1826") adopted requirements for each commercial solid waste generator, including multi-family dwellings of five or more units, to provide for organics recycling programs, and for each City or County to implement organics recycling programs for commercial solid waste generators, including multi-family dwellings of five or more units by April 1, 2016; and

**WHEREAS**, the City Council finds that the City could face fines up to \$10,000 a day for not meeting the above mandated goals;

**WHEREAS**, the Commerce Municipal Code authorizes the City Council to award one or more franchises for the collection of solid waste from Commercial Premises in the City of Commerce; and

**WHEREAS**, City is obligated to protect the public health and safety of the residents of

the City of Commerce by arranging for the collection of Commercial Solid Wastes in a manner consistent with the exercise of the City's police power for the protection of public health and safety; and

**WHEREAS**, City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of Commercial Solid Waste, including AB 341 and AB 1826, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 *et seq.* the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.* and the Carpenter-Presley-Tanner Hazardous Substance Account Act ("HSAA"), codified at California Health & Safety Code § 25300 *et seq.*; and

**WHEREAS**, City and Contractor desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, City is not thereby becoming a "generator" or an "arranger" as those terms are used in the context of CERCLA § 107(a)(3) and that as Contractor, an independent entity, and not City, which is "arranging for" the collection from Commercial Premises in the City of Commerce, the transport for disposal and the disposal of Commercial Solid Wastes (which may contain small amounts of consumer products with the characteristics of Hazardous Substances), the collection, transportation and composting of Food Waste and Green Waste, and the recycling of Recyclable Materials collected from Commercial Premises in the City of Commerce; and

**WHEREAS**, there are no places within the City of Commerce where landfills are located or which are suitable for the siting of a landfill, and therefore Commercial Solid Waste must be exported from the City; and

**WHEREAS**, Contractor, and not City, will select the transfer station, landfill or transformation facility destination of the non-recyclable materials which Contractor will arrange to collect; and City has not, and by this Agreement does not, instruct Contractor on its collection methods nor supervise the collection of Commercial Waste, and nothing in this Agreement or other action of the City shall be construed to place title to such waste in City; and

**WHEREAS**, the City and Contractor have agreed that on the effective date of this Agreement, this Agreement supersedes any and all prior Agreements and amendments between the City and Contractor for the collection of Commercial Waste; and

**WHEREAS**, Contractor represents and warrants to City that Contractor has the experience, responsibility and qualifications to conduct recycling programs, and to achieve State-required diversion rates (in comparison with City's Solid Waste generation rates), sufficient to achieve the required diversion goals required for City, and to arrange for the collection, safe transport and disposal of Commercial Waste in a manner which will minimize the adverse effects of collection vehicles on air quality and traffic and will protect, and has the ability to carry out its duties to indemnify the City against liability under CERCLA which might arise under this Agreement; and

**WHEREAS**, the City Council of the City of Commerce determines and finds pursuant to California Public Resources Code Section 40059(a)(1), that the public health, safety and welfare, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles, and in an effort to afford protection of the City against CERCLA liability and related claims, require that Contractor be awarded a contract for collection, recycling and disposal of Solid Waste from Residential and Commercial Premises in the City of Commerce.

**NOW, THEREFORE, in consideration of the mutual covenants, conditions and consideration contained herein the City and Contractor agree as follows:**

## SECTION 1. DEFINITIONS

Whenever any term used in this Agreement has been defined by the Commerce Municipal Code or Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the California Public Resources Code shall apply unless the term is otherwise defined in this Agreement.

**“Agreement”** means this written document and all amendments thereto, between the City and Contractor, governing the provision of Collection Services as provided herein.

**“Agreement Year”** means each twelve (12) month period from the effective date.

**“Alternative Daily Cover” or “ADC”** means Disposal Facility cover material, other than Green Waste and at least six (6) inches of earthen material, placed on the surface of the active face of the refuse fill area at the end of each operating day to control vectors, fires, odor, blowing litter and scavenging, as defined in Section 20164 of the California Code of Regulations.

**“Bin”** means a metal or plastic container, with a capacity of one (1) cubic yard up to and including six (6) cubic yards, designed or intended to be mechanically dumped into a loader packer type truck, or a larger debris box or open-top container up to forty (40) cubic yards in capacity, that is approved for such purpose by the City and used for the collection of Organic Waste, Recyclable Material, and/or Solid Waste.

**“Biohazardous” or “Biomedical Waste”** means any waste which may cause disease or **reasonably** be suspected of harboring pathogenic organisms; included are waste resulting from the operation of medical clinics, hospitals, and other facilities processing wastes which may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves.

**“Brown Goods”** means electronic equipment such as stereos, televisions, VCR’s, Personal Data Assistants (PDAs), telephones, and other similar items not containing cathode ray tubes (CRTs).

**“Bulky Items”** means large and small appliances, Brown Goods, E-Waste, furniture, carpets, mattresses, white goods, oversized Green Waste such as tree trunks if no larger than two feet (2’) in diameter and four feet (4’) in length and similar large items discarded from commercial premises except that organic waste may not be bundled and placed for collection as Bulky Items.

**“Bulky Items Collection Service”** means the periodic on-call Collection of Bulky Items by Contractor from service accounts within the City and the delivery of those Bulky Items to a disposal facility, Materials Recovery Facility, Organic Waste Processing Facility or such other facility as may be appropriate under the terms of this Agreement. Bulky Items Collection Service does not include the Collection of Bulky Items through the use of Roll-Off Containers.

**“C&D Processing Facility”** means any facility selected by Contractor that is designed, operated and legally permitted for the purpose of receiving and processing Construction and Demolition Debris.

**“City”** means the City of Commerce, California.

**“City Clean-Up Service”** means the collection of Solid Waste, Organic Waste and Recyclable Materials by Contractor resulting from written or verbal requests from the City for temporary clean-up of Solid Waste, Organic Waste, Recyclable Materials or Bulky Items. Such service shall include the provision of Roll-Off Containers by Contractor.

**“City Collection Service”** means all commercial refuse and recycling collection services.

**“City Food Waste Collection Service”** means the Collection of Food Waste, by Contractor, from service accounts within the City and the delivery of that Food Waste to the Organic Waste

Processing Facility.

**“City Organic Waste Collection Service”** means the Collection of Organic Waste, by Contractor, from service accounts within the City and the delivery of that Organic Waste to the Organic Waste Processing Facility.

**“City Recycling Service”** means the Collection of Recyclable Materials, by Contractor, from service accounts within the City and the delivery of those Recyclable Materials to a Materials Recovery Facility.

**“City Representative”** means the City Administrator or his/her designee, to administer and monitor the provisions of this Agreement.

**“City Roll-Off Container Service”** means the provision of Roll-Off Containers at service accounts for the accumulation of Solid Waste, Organic Waste and Recyclable Materials and the Collection, Processing and Disposal of those materials and such other Bulky Items from the service accounts. City Roll-off Container Services excludes Construction and Demolition Materials attributed to new construction projects on City buildings and/or City facilities.

**“Commercial Premises”** means all retail, professional, office, wholesale and industrial facilities, and other commercial and industrial enterprises offering goods or services to the public, and Multi-Family Units of five (5) or more units, federal, state and county facilities, including, but not limited to schools, school district offices, special districts and water districts (to the extent permitted by law), where Solid Waste is generated or accumulated.

**“Commercial Service Recipient” or “Commercial Service Account”** means an individual or company not included in the definition of Residential Service Unit receiving Collection Service.

**“Commercial Waste”** means Solid Waste, Recyclable Materials, Organic Waste and Bulky Items resulting from the normal activities of a commercial service account. Commercial Waste must be generated by and at the service location wherein the Commercial Waste is Collected and does not include items defined herein as Exempt Waste.

**“Compactor”** means any Roll-Off Container or Bin which has a compaction mechanism, whether stationary or mobile.

**“Composting”** means the controlled biological decomposition of Food Waste and/or Green Waste into a specific mixture of decayed organic matter used for fertilizing or soil conditioning.

**“Construction and Demolition Debris”** means commonly used or discarded materials removed from construction, remodeling, repair, demolition, or renovation operations on any pavement, house, or other structure, or from landscaping accumulating or originating from any Service Unit. Such materials include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastics, roofing material, cardboard, carpeting, cinder blocks, concrete, copper, electrical wire, fiberglass, Formica, granite, iron, lad, linoleum, marble, plaster plant debris, pressboard, porcelain, steel, stucco, tile, vinyl, wood, masonry, rocks, trees, remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, packaging and rubble resulting from construction, remodeling, renovation, repair and demolition operations on pavements, houses, commercial buildings and other structures. Construction and Demolition Debris does not include Exempt Waste.

**“Construction and Demolition Debris Collection Service”** means the Collection of Construction and Demolition Debris by Contractor from project sites within the City and the delivery of that Construction and Debris materials to a C&D Processing Facility or Disposal Facility that is permitted to accept Construction and Demolition Debris materials.

**“Container”** includes all Bins, Carts, Compactors, and Roll-Off Containers provided by Contractor to Service Recipients for the temporary accumulation and collection of Solid Waste, Recyclable Materials, Food Waste, Green Waste, and Construction and Demolition Debris.

**“Contractor”** means refuse and recycling hauler under a semi-exclusive agreement with the City.

**“Disposal Facility”** means place or places specifically designated by Contractor for the disposal, or processing as appropriate of Commercial Waste.

**“Electronic Waste (E-Waste)”** means discarded electronics equipment such as cell phones, computers, monitors, televisions, and other items containing cathode ray tubes (CRTs), LCD or plasma screens and monitors.

**“Exempt Waste”** means Biohazardous or Biomedical Waste, asbestos or asbestos materials, Hazardous Waste, Sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, and those wastes under the control of the Nuclear Regulatory Commission.

**“Food Waste”** means food scraps and trimmings from food preparation, including but not limited to: meat, fish and dairy waste, fruit and vegetable waste, grain waste, and acceptable food packaging such items as pizza boxes, paper towels, waxed cardboard and food contaminated paper products.

**“Food Waste Collection Service”** means the Collection of Food Waste by Contractor from Service Units in the Service Area and the delivery of that Organic Waste to an Organic Waste Processing Facility.

**“Semi-Exclusive Franchise”** means the semi-exclusive agreement granted to haulers.

**“Semi-Exclusive Franchise Fee”** means the fee as a percentage of Gross revenues imposed by the City on Contractor because of its status as party to this Agreement and which, *inter alia*, is intended to offset the City’s expenses in administering the Franchise and to compensate City for the expenses of administering the program for the Residential, Commercial and City Waste streams, reporting requirements under the Act and other related expenses. Contractor shall pay City an amount equal to fifteen percent (15%) of Contractor’s Gross Revenues per month as a Franchise Fee.

**“Garbage”** means all putrescible waste which generally includes, but is not limited to, animal, vegetative, food or any other waste that is attendant with, or results from the storage, preparation, cooking or handling of food materials attributed to normal activities of a Service Account. Garbage must be generated by and at the Service Account wherein the Garbage is Collected. Garbage does not include those items defined herein as Organic Waste or Exempt Waste.

**“Green Waste”** means any vegetative matter resulting from normal landscaping maintenance. Green Waste includes plant debris, such as ivy, grass clippings, leaves, pruning, weeds, branches, brush, Holiday trees, and other forms of vegetative waste and must be generated by and at the Service account location wherein the Green Waste is collected. Green Waste does not include items herein defined as Exempt Waste. Green waste shall not include palm fronds, yucca plants, cactus or other materials that cannot be easily composted.

**“Green Waste Collection Service”** means the Collection of Green Waste by Contractor from service accounts in the City and the delivery of that Green Waste to an Organic Waste Processing Facility.

**“Gross Revenues”** means any and all revenue or compensation received in any form derived directly or indirectly by Contractor, its affiliates, subsidiaries, parents and any person or entity in which Contractor has a financial interest, from the Collection, transportation, processing, disposal and other services with respect to Solid Waste Collected within the City of Commerce, including Recyclable Materials and Green Waste pursuant to this Agreement. “Gross Revenues” include, but are not limited to, monthly customer fees received for Collection of Solid Waste, including recyclable Solid Waste, Organic Waste, special pickup fees, Roll-Off Container rental and Collection fees and fees for redelivery of Roll-Off Containers without subtracting Franchise

Fees or any other cost of doing business, but excludes revenues from the sale of Recyclable Materials and recyclable Solid Waste.

**“Hazardous Waste”** means any waste materials or mixture of wastes defined as a “hazardous substance” or “hazardous waste” pursuant to the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601 *et seq.*, the Carpenter-Presley-Tanner Hazardous Substance Account Act (“HSAA”), codified at California Health & Safety Code § 25300 *et seq.*; and all future amendments to any of them, or as defined by the California Integrated Waste Management Board. Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over hazardous or Solid Waste, the term “Hazardous Waste” shall be construed to have the broader, more encompassing definition.

**“Material Recovery Facility” or “MRF”** means any facility selected by Contractor that is designed, operated and legally permitted for the purpose of a) receiving and processing source separated Recyclable Materials, or b) receiving and processing Solid Waste for diversion of Recyclable Materials and/or Organic Waste from disposal.

**“Multi-Family Premises” or “Multi-Family Service Unit”** means those Commercial Premises such as apartments, condominiums and town homes with five (5) or more units. Premises consisting of fewer than five (5) units are considered residential units and not subject to this Agreement.

**“Non-Collection Notice”** means a form developed by Contractor, as approved by the City, to notify Service Recipients of the reason for non-collection of materials set out by the Service Recipient for Collection by Contractor pursuant to this Agreement.

**“Organic Waste”** means Food Waste and/or Green Waste.

**“Organic Waste Collection Service”** means the Collection of Organic Waste by Contractor from service accounts in the City and the delivery of that Organic Waste to an Organic Waste Processing Facility.

**“Organic Waste Processing Facility”** means any facility selected by Contractor that is designed, operated and legally permitted for the purpose of receiving and processing Organic and/or Green Waste.

**“Recyclable Materials”** means those materials which are capable of being recycled and which would otherwise be processed or disposed of as refuse.

**“Recycling Cart”** means a heavy plastic receptacle with wheels and a rated capacity of at least thirty-two (32) gallons and not more than ninety-six (96) gallons, having a hinged tight-fitting lid, and wheels and appropriately labeled as a Recycling Cart.

**“Recycling Service”** means the Collection of Recyclable Materials by Contractor from service accounts in the City and the delivery of those Recyclable Materials to an appropriate facility for the processing and marketing of those Recyclable Materials.

**“Roll-Off Container”** means a metal container ranging in size from 10 cubic yards to 40 cubic yards used for the collection of all materials and that is normally mechanically dumped into a loader packer type garbage truck, loaded onto a fork type vehicle, or loaded onto a motor vehicle and transported to an appropriate facility. Roll-Off Containers includes both roll-off and temporary bins.

**“Scavenging”** means the unauthorized removal of Recyclable Materials. Scavenging is prohibited by California Public Resources Code § 41950.

**“Service Area”** means that area within the incorporated limits of the City of Commerce, California.

**“Service Recipient”** means an individual or company receiving Collection Service.



**“Service Account”** means any Commercial Premises or Multi-family with 5 or more units in the Service Area.

**“Sludge”** means the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects.

**“Solid Waste”** means all refuse, non-recyclable packaging, and putrescible waste attributed to normal activities of a Service Account. Solid Waste must be generated by and at the Service Account location wherein the Garbage is Collected. Solid Waste does not include those items defined herein as Recyclable Materials, Organic Waste, Bulky Items, E-Waste, U-Waste, or Exempt Waste.

**“Solid Waste Cart”** means a heavy plastic receptacle with wheels and a rated capacity of at least thirty-two (32) gallons and not more than ninety-six (96) gallons, having a hinged tight-fitting lid and wheels, provided by the Contractor for use by Service Recipients for Collection Services under this Agreement and appropriately labeled as a Solid Waste/Refuse Cart.

**“Solid Waste Collection Service”** means the Collection of Solid Waste by Contractor from Service Accounts in the Service Area and the delivery of that Solid Waste to a Disposal Facility.

**“Universal Waste (U-Waste)”** means Fluorescent lamps, cathode ray tubes, non-empty aerosol cans, instruments and switches that contain mercury, and dry cell batteries containing cadmium copper or mercury.

**“Vehicle Impact Fee”** means the fee imposed by the City on Contractor intended to compensate the City for damage to its streets, sidewalks, curbs and gutters and other infrastructure resulting from Contractor’s exercise of the Semi-exclusive Franchise.

## **SECTION 2. SEMI-EXCLUSIVE GRANT OF PRIVILEGE TO ARRANGE FOR THE COLLECTION OF SOLID WASTE AND RECYCLABLE MATERIALS.**

**2.1 Binding Agreement.** In consideration of the mutual promises contained herein, City and Contractor enter into and agree to be bound by and comply with all of the requirements of this Agreement on the effective date of this Agreement and throughout the term of the Agreement.

**2.2 Grant of Semi-exclusive Franchise.** This Agreement grants to Contractor for the period specified in Agreement during which Collection Services are to be provided, the semi-exclusive privilege to arrange for the collection of, and to collect, transport, process, recycle, compost, retain and dispose of Solid Waste, as defined in this Agreement, produced, generated and/or accumulated within the City, except as otherwise provided below in SECTION 2.3 and as provided by Title 6 – Health and Safety of the City’s Municipal Code. This Agreement does not assign any specific service accounts or zones to the Contractor. Contractors may collect and dispose of Construction and Demolition Debris and provide other temporary bin services throughout the City.

**2.3 Exclusions and Limitations to Scope of Semi-exclusive Agreement.** The following are excluded from the Scope of this Exclusive Agreement:

- a. Disposal of Green Waste produced as a result of City’s landscape maintenance operations and contracts;

This Agreement shall not prohibit gardeners and landscapers from collecting and composting or transporting Green Waste, in accordance with Title 6 – Health and Safety of the City’s Municipal Code;

- b. Collection and recycling or disposal of Construction and Demolition Debris by a

licensed contractor performing work within the scope of the contractor's license , using equipment owned or leased by the contractor, and not through a solid waste enterprise;

- c. Recyclable Materials or Bulky Items that are source separated from Solid Waste by a Service Recipient, for which the waste generator sells, donates or is otherwise compensated by a collector in a manner resulting in a net payment to the Service Recipient;
- d. Solid Waste, Recyclable Materials, Bulky Items, Food Waste or Green Waste, which is removed from any Service Unit and which is transported personally by the owner or occupant of such premises (or by his or her full-time employees but not including construction related employees or subcontractors) to a processing or Disposal Facility, and is done so in a manner consistent with City Municipal Code. This includes material that is removed and transported by "Self-Haulers" as described in section 5250 of the City's Municipal Code;
- e. Recyclable Materials, Food Waste, Green Waste or Bulky Items which are source separated at any premises by the waste generator and donated to youth, civic or charitable organizations;
- f. California Redemption Value (CRV) containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, section 14500, et seq.;
- g. Green Waste removed from a premises by a gardening, landscaping, or tree trimming company as an incidental part of a total service offered by that company rather than as a hauling service;
- h. Construction and Demolition Debris where the Service Recipient holds a building permit with a construction value of \$50,000 or less, and such construction project was done by the Service Recipient or, done as part of a total service offered by a licensed company or by the City, and where the licensed company uses its own equipment and employees, and no Roll-Off Containers are used for the Collection and transportation of such Construction and Demolition Debris;
- i. Bulky Items removed from a premises by a property cleanup or maintenance company as an incidental part of the total cleanup or maintenance service offered by the company rather than as a hauling service;
- j. Hazardous Waste regardless of its source;
- k. Residential or Commercial Waste or Recyclable Materials that are removed from a premise by a company through the performance of a service that Contractor has elected not to provide; and
- l. Commercial Solid Waste Collection Services for governmental agencies other than City, which may have facilities in City, but over which City has no jurisdiction in connection with the regulation of Solid Waste, such as State, county and school district facilities are not included in the scope of this Agreement.

**2.4 Waiver of Rights.** Contractor waives any right it may have to challenge the terms of this Agreement under federal, state or local law, or administrative regulation, except as provided in SECTION 20 of this Agreement.

**2.5 Other Services; Niche Recycling Services.** City reserves the right to enter into agreements with other entities for other Solid Waste and recycling services not specifically provided for in this Agreement, including, but not limited to disposal of commercial waste from City Facilities and City's landscape maintenance operations, contract services and "niche" recycling services, such as collection of hazardous waste and other special waste.

### **SECTION 3. TERM.**

3.1 The initial term of this Agreement shall be for a five (5) year period beginning November 1, 2018 and terminating on October 31, 2023 with an option to extend the term by two (2) additional two (2) year terms per the City's discretion.

3.2 This Agreement also requires Contractor to provide other services (e.g., access to landfill destination information, insurance and indemnification and an insurance policy repository) beyond the period during which Collection Services are to be provided pursuant to this Agreement.

### **SECTION 4. COMPLIANCE WITH LAWS AND REGULATIONS**

Contractor warrants that it will comply with all applicable laws and implementing regulations, as they, from time to time, may be amended, specifically including, but not limited to RCRA, CERCLA, AB 341, AB 939, AB 1594, AB 1826, Article V Chapter 1 of the City's Municipal Code, and all other applicable laws and regulations of the State of California, ordinances of the City and the requirements of Local Enforcement Agencies and all other agencies with jurisdiction.

### **SECTION 5. SERVICES PROVIDED BY CONTRACTOR**

**5.1 Grant to Semi-Exclusive Agreement.** Except as otherwise provided in this Agreement and the City's Municipal Code, Contractor is herein granted a semi-exclusive Agreement to provide Commercial Solid Waste and Recycling Services within City limits.

**5.2 City Approval of Other Service Providers.** Contractor acknowledges and agrees that the City may permit other persons besides Contractor to collect any and all types of materials excluded from the scope of this Agreement without seeking or obtaining approval from Contractor. If Contractor can produce evidence that other persons are providing said services in a manner that is not consistent with the City's Municipal Code or this Agreement, it shall report the location, the name and phone number of the person or company to the City along with Contractor's evidence of the violation of the exclusiveness of this Agreement, and Contractor shall assist the City to enforce the Code and this Agreement.

The scope of this Agreement shall be interpreted to be consistent with applicable law, now and during the term of the Agreement. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the City to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial interpretations or new laws.

**5.3 Service Standards.** Contractor shall perform all services under this Agreement in a thorough and professional manner. Services described in this Agreement shall be performed regardless of weather conditions or difficulty.

**5.4 Manner of Collection.** Contractor shall provide Collection Services with as little disturbance as possible and shall leave any container in an upright position, and at the same point it was collected without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

## **5.5 Containers.**

Labeling. Bins are to be painted with the type of materials to be collected (i.e., Solid Waste, Green Waste, Organic Waste, Recyclable Materials) and instructions for proper usage. Carts are to be hot-stamped, embossed, laminated, or painted with a unique identification number, and Carts are to be in-molded with the type of materials to be collected (i.e., Solid Waste, Green Waste, Organic Waste, Recyclable Materials) and instructions for proper usage. The in-molding shall be on the lids with graphics provided by Contractor and reviewed by the City. Contractor is responsible for replacement and repairs. Carts shall be in a uniform color scheme, with the bodies and lids the same color as follows "Blue" for Recycling Carts, "Green" for Organic Waste Carts, and "Black" for Solid Waste Carts. To the degree possible, Bins shall also follow the same color scheme as Carts, but at a minimum clearly be labeled as "Green Waste", "Organic Waste", "Recyclable Materials", and "Solid Waste", as appropriate.

Purchase and Distribution of Bins and Carts. Contractor shall be responsible for the purchase and distribution of fully assembled and functional Bins and Carts to their service accounts.

Replacement of Bins and Carts. Contractor's employees shall take care to prevent damage to Bins and Carts. However, any Bin or Cart stolen or damaged shall be replaced by Contractor within three (3) Work Days, or as may be agreed upon with the Customer at no cost or inconvenience to the Service Recipient. Contractor shall maintain its Bins and Carts placed in the City free of "tagging" or graffiti.

Contractor shall maintain records documenting all Bin and Cart replacements occurring on a monthly basis.

Repair of Bins and Carts. Contractor shall be responsible for repair of Bins and Carts. Within three (3) Work Days of notification, or as may be agreed upon with Customer, by the City or a Service Recipient of the need for such repairs, Contractor shall repair the cart or if necessary, remove the Bin or Cart for repairs and deliver a replacement cart to the Service Recipient.

Bin or Cart Exchange. Upon notification to Contractor by the City or a Service Recipient that a change in the size or number of Bins or Carts is required, Contractor shall deliver such Bins or Carts to such Service Recipient within three (3) Work Days, or as may be agreed upon with Customer.

Ownership of Bins and Carts. Contractor shall own Bins and Carts. Upon termination of this Agreement, Contractor shall be responsible for removing all Bins and Carts in service from the Service Area.

Annual Cleaning. At the request of customers, at no charge to the Service Account, Contractor shall clean all Carts, Bins or Roll-Off Containers at a Service Unit's premises annually or shall replace the dirty Carts, Bins or Roll-Off Containers with clean Carts, Bins or Roll-Off Containers and remove the dirty Bins or Roll-Off Containers for cleaning.

**5.6 Labor and Equipment.** Contractor shall provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of Contractor's obligations under this Agreement. Contractor shall at all times have sufficient backup equipment and labor to fulfill Contractor's obligations under this Agreement. No compensation for Contractor's services or for Contractor's supply of labor, equipment, tools, facilities or supervision shall be provided or paid to Contractor by City.

## **5.7 Disposal and Processing.**

Disposal Facility. Except as set forth below, all Solid Waste collected as a result of performing Collection Services shall be transported to, and disposed of, at a legally

permitted Disposal Facility.

Material Recovery Facility. All Recyclable Materials collected as a result of performing Collection Services shall be delivered to a legally permitted Material Recovery Facility (MRF). In the event the MRF is closed on a Work Day, a permitted comparable facility may be used.

Organic Waste Processing Facility. Contractor shall deliver all collected Organic Waste to a legally permitted Organic Waste Processing Facility. Contractor shall ensure that all Organic Waste collected pursuant to this Agreement, except residue resulting from processing, is diverted from the Disposal Facility in accordance with commercial refuse legislation and regulations.

**5.8 Inspections.** The City shall have the right to inspect Contractor's facilities or Collection vehicles and their contents at any time while operating inside or outside the City.

**5.9 Commingling of Materials.**

Solid Waste, Recyclable Materials and Organic Waste. Contractor shall not at any time commingle Solid Waste, Collected pursuant to this Agreement, with any Recyclable Materials or Organic Waste separated for collection pursuant to this Agreement without the express prior written authorization of the City Representative.

Recyclable Materials Collected in Commerce. Contractor shall not at any time commingle Recyclable Materials Collected pursuant to this Agreement, with any other material Collected by Contractor inside or outside the City without the express prior written authorization of the City Representative.

Organic Waste Collected in Commerce. Contractor shall not at any time commingle Organic Waste Collected pursuant to this Agreement, with any other material Collected by Contractor inside or outside the City without the express prior written authorization of the City Representative.

**5.10 Spillage and Litter.** Contractor shall not litter premises in the process of providing Collection Services or while its vehicles are on the road. Contractor shall transport all materials Collected under the terms of this Agreement in such a manner as to prevent the spilling or blowing of such materials from Contractor's vehicle. Contractor shall exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of Solid Waste and/or Recyclable Material and shall immediately, at the time of occurrence, clean up such spilled or dropped materials.

Contractor shall not be responsible for cleaning up un-sanitary conditions caused by the carelessness of the Service Recipient; however, Contractor shall clean up any material or residue that are spilled or scattered by Contractor or its employees.

Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from Contractor's operations or equipment repair shall be covered immediately with a dry absorptive material and removed from the street surface. When necessary, Contractor shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. To facilitate such cleanup, Contractor's vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel. No such material shall enter the stormdrain. Should such spill material enter the stormdrain, Contractor is responsible for immediately reporting such incident to the City Representative.

The above paragraphs notwithstanding, Contractor shall clean up any spillage or litter caused by Contractor within two (2) hours upon notice from the City or other reporting party.

In the event where damage to City streets is caused by a hydraulic oil spill, Contractor

shall be responsible for all repairs to return the street to the same condition prior to the spill. Contractor shall also be responsible for all clean-up activities related to the spill. Repairs and clean-up shall be performed in a manner satisfactory to the City Representative and at no cost to the City.

#### **5.11 Hazardous Waste.**

Under no circumstances shall Contractor's employees knowingly collect Hazardous Waste or remove unsafe or poorly containerized Hazardous Waste, from a Collection Container. If Contractor determines that material placed in any Container for Collection is Hazardous Waste or other material that may not legally be accepted at the Disposal Facility or one of the processing facilities, or presents a hazard to Contractor's employees, Contractor shall have the right to refuse to accept such material. The Contractor shall contact the generator to arrange for proper disposal service. If the generator cannot be reached immediately, Contractor shall, before leaving the premises, leave a Non-Collection Notice, which indicates the reason for refusing to collect the material, and how the Hazardous Waste can be properly disposed or recycled.

If Hazardous Waste is found in a Collection Container that poses an imminent danger to people or property, Contractor shall immediately notify the City or Los Angeles County Fire Department. Contractor shall immediately notify the City Representative of any Hazardous Waste that has been identified.

If Hazardous Waste is identified at the time of delivery to the Disposal Facility, or one of the processing facilities and the generator cannot be identified, Contractor shall be solely responsible for handling and arranging transport and disposition of the Hazardous Waste.

**5.12 Regulations and Record Keeping.** Contractor shall comply with emergency notification procedures required by applicable laws and regulatory requirements. All records required by regulations shall be maintained at Contractor's facility. These records shall include waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

## **SECTION 6. TYPES AND FREQUENCY OF SERVICE**

**6.1 Collection.** These services shall be governed by the following terms and conditions:

Contractor agrees to comply with all federal, state, and local laws and regulations applicable to the services provided under the authority of this Agreement. Contractor is familiar with all applicable and proposed air quality rules and regulations, including the rules of the South Coast Air Quality Management District applicable to operators of fleets of refuse collection vehicles, and as such rules may be adopted or amended during the term of this Agreement. Contractor shall at all times during the period of this Agreement, operate its fleet of refuse collection vehicles in full compliance with all applicable rules and regulations. Failure to comply with these rules and regulations, or any other law or regulation shall be a material breach of this Agreement.

Conditions of Service. Contractor shall provide Collection Services in the City to Service Recipients whose Solid Waste is properly containerized in Solid Waste Carts or Bins, Recyclable Materials are properly containerized in recycling Carts or Bins, and Organic Waste/Green Waste is properly containerized in Carts or Bins. Commercial Solid Waste, Recycling and Organic Waste Carts and Bins will be serviced where normal Commercial Collection Service is provided.

Frequency and Scheduling of Service. In order to protect the public health and safety and control the spread of vectors, Contractor shall collect Solid Waste and Recyclable Material

at least one (1) time per week on a scheduled route basis, or more frequently if agreed to by both parties.

Locking Bins Contractor shall provide locking Bin Service to Customers that request such service.

Temporary Bin/Roll-off Service Contractor shall provide temporary Bin and/or Roll-off service to Customers upon request. Contractor must deliver a temporary Bin or Roll-off to a Customer within three work days of request, or as may be agreed upon by Customer. Contractor may charge for such services at competitive rates as determined by open competition among the City-licensed haulers.

Purchase of Recyclable Materials. Contractor may purchase Recyclable Materials from its Service Recipients, but shall not have the exclusive right to do so.

Scavenging - Discouragement. Contractor will take whatever, if any, legal actions which may be appropriate and effective to discourage Scavenging of Recyclable Materials from the Service Area.

Recycling - Changes to Work. Should changes in law arise that necessitate any additions or deletions to the work described herein including the type of items included as Recyclable Materials, the parties shall agree to amend the Agreement if necessary to include such modifications to the work to be performed.

**6.2 Commercial Waste Collection Service per AB 1826.** Contractor shall collect and remove all Organic Waste placed for Collection in Containers provided by Contractor, on regular Collection days.

Organic Waste Containers. Organic Waste shall be collected in Carts, Bins or 10 – 40 Cubic Yard Roll-Off Containers.

Commercial Service Units. Contractor shall provide Food Waste Collection to Commercial Service Units. Such service is not required to be provided to Multi-family Service Units.

Diversion Credit. Contractor shall obtain the maximum available diversion credit to the City for Organic Waste Collected pursuant to this Agreement.

Non-Collection. Contractor shall not be required to collect any Organic Waste that is mixed with either Solid Waste or Recyclable Materials. In the event of non-collection, Contractor shall affix to the Organic Waste Cart a Non-Collection Notice explaining why Collection was not made. Contractor shall maintain a copy of such notices during the term of this Agreement.

Organic Waste Disposal. Contractor shall ensure that the Organic Waste collected pursuant to this Agreement is not disposed of in a landfill, except as a residue resulting from processing or deemed contaminated by the Organic Waste Processing Facility.

Commercial Food Waste Collection Service. As necessary to meet the requirements of AB 1826, Contractor shall include the Collection of Food Waste as part of the standard Commercial Solid Waste Services where applicable. Contractor shall purchase and distribute Bins or Carts to each applicable Service Recipient as needed. Commercial Food Waste Collection Service can be provided through separate collection of Food Waste Carts or Bins, commingled with Green Waste, or through processing Solid Waste

Food Waste Disposal. Contractor shall ensure that the Food Waste Collected pursuant to this Agreement is not disposed of in a landfill, except as a residue resulting from processing.

**6.3 Roll-Off Container Collection Service.** Contractor shall provide Roll- Off Container Collection Service to those Service Units requesting such service. Roll-Off Container Collection Services shall be provided on a temporary basis only in bins or roll-off

containers ranging from 2 cubic yards to 40 cubic yards.

Manner of Collection. Contractor shall provide Roll-Off Container Collection Services with as little disturbance as possible and shall leave any Roll- Off Containers at the same point it was collected without obstructing alleys, roadways, driveways, sidewalks, or mail boxes.

Ownership of Roll-Off Containers. Ownership of Roll-Off Containers distributed by Contractor shall rest with Contractor.

Inspection and Cleaning. Contractor shall inspect all Roll-Off Containers prior to delivery. Roll-Off Containers shall be in safe, sanitary, and operable condition as appropriate for the type of container, with working doors, hinges, and locking devices as appropriate, safety devices, floors and side walls without holes, free of material or material build up, and without broken wheels, welds, or ladders that could cause street damage or harm to users. All Roll-Off Containers will have the name of Contractor and a local toll free phone number visible on two sides.

Graffiti Removal. Contractor shall remove any and all graffiti from Roll-Off Containers within 72 hours of being identified by Contractor or City Representative. Contractor shall not deliver a Roll-Off Container without Contractor information or with any graffiti visible on the Roll-Off Container.

Processing and Disposal. Contractor shall process and dispose of all Construction and Demolition Debris collected.

Contractor shall not landfill such Construction and Demolition Debris unless the material cannot be reused or recycled.

## **SECTION 7. COLLECTION EQUIPMENT**

**7.1 General.** Contractor warrants that it shall provide an adequate number of vehicles and equipment for the collection, disposal and transportation services for which it is responsible under this Agreement.

**7.2 Collection Vehicles.** Contractor shall maintain its collection vehicles used in the City in a clean and sanitary condition. Contractor shall provide alternative fueled collection vehicles such as CNG/LNG that are in full compliance with local, State and federal clean air requirements to provide Collection services in the City.

**7.3 Streets and Alleys.** Contractor shall use its best efforts to prevent damage to alleys, streets, and parking lots over which its Collection equipment may be operated and to obtain all required approvals for operation of its Collection vehicles on private streets, parking lots and private alleys.

### **7.4 Equipment Specifications.**

General Provisions. All equipment used by Contractor in the performance of services under this Agreement shall be of a high quality. The vehicles shall be designed and operated so as to prevent collected materials from escaping from the vehicles. Hoppers shall be closed on top and on all sides with screening material to prevent Collected materials from leaking, blowing or falling from the vehicles. All trucks and Containers shall be watertight and shall be operated so that liquids do not spill during Collection or in transit.

Clean Air Vehicles. During the term of this Agreement, to the extent required by law, Contractor shall provide its Collection vehicles to be in full compliance with local, State and federal clean air requirements.

**7.5 Safety Markings.** All Collection equipment used by Contractor shall have appropriate



safety markings including, but not limited to, highway lighting, flashing lights, and clearance lights. All such safety markings shall be subject to the approval of the City and shall be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time.

**7.6 Vehicle Signage and Painting.** Collection vehicles shall have signage painted in letters of contrasting color, at least six (6) inches high, on each side providing Contractor's name, Contractor's customer service telephone number, and the number of the vehicle. No advertising shall be permitted other than the name of Contractor except promotional advertisement of the Recyclable Materials and Organic Waste programs. Contractor shall repaint all vehicles (including vehicles striping) during the term of this Agreement on a frequency as necessary to maintain a positive public image as reasonably determined by the City Representative.

**7.7 Vehicle Registration, Licensing and Inspection.** On or before the Agreement Effective Date and July 1<sup>st</sup> annually thereafter during the term of this Agreement, Contractor shall submit documentation to the City Representative to verify that each of Contractor's Collection vehicles is in compliance with all registration, licensing and inspection requirements of the California Highway Patrol, the California Department of Motor Vehicles, and any other applicable laws or regulations. Contractor shall not use any vehicle to perform Collection Services that is not in compliance with applicable registration, licensing and inspection requirements.

**7.8 Equipment Maintenance.** Contractor shall maintain Collection equipment in a clean condition and in good repair at all times. All parts and systems of the Collection equipment shall operate properly and be maintained in a condition satisfactory to City. Contractor shall wash all Collection vehicles at least once a week.

**7.9 Maintenance Log.** Contractor shall maintain a maintenance log for all Collection vehicles. The log shall at all times be accessible to City by physical inspection upon request of City Representative, and shall show, at a minimum, each vehicle's Contractor assigned identification number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance of any additional maintenance, and description of additional maintenance performed.

**7.10 Reserve Equipment.** Contractor shall have available to it, at all times, reserve Collection equipment which can be put into service and operation within one (1) hour of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by Contractor to perform the contractual duties.

**7.11 Personnel.** Contractor shall employ and assign qualified personnel to perform all services set forth herein. Contractor shall be responsible for ensuring that its employees comply with all applicable laws and regulations and meet all federal, state and local requirements related to their employment and position.

The City may request the transfer of any employee of Contractor who materially violates any provision hereof, or who is wanton, negligent, or discourteous in the performance of his/her duties.

Contractor's field operations personnel shall be required to wear a clean uniform shirt bearing Contractor's name. Contractor's employees, who normally come into direct contact with the public, including drivers, shall bear some means of individual photographic identification such as a name tag or identification card.

Each driver of a Collection vehicle shall at all times carry a valid California driver's license and all other required licenses for the type of vehicle that is being operated. Each driver of a Collection vehicle shall at all times comply with all applicable state and federal laws,

regulations and requirements.

Contractor's employees, officers, and agents shall at no time be allowed to identify themselves or in any way represent themselves as being employees of the City.

## **SECTION 8. PRIVACY.**

**8.1 General.** Contractor shall not reveal or report information identifying individual Service Recipients, or the composition or contents of a Service Recipient's Solid Waste, Recyclable Materials, or Organic Waste to any person, governmental unit, private agency or company unless upon the authority of a court of law, by statute, or upon valid authorization of the Service Recipient. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of Solid Waste characterization studies or waste stream analyses which may be required by AB 939.

**8.2 Mailing Lists.** Contractor shall not market or distribute mailing lists with the names and addresses of Service Recipients.

**8.3 Privacy Rights Cumulative.** The rights accorded Service Recipients pursuant to this SECTION shall be in addition to any other privacy rights accorded Service Recipients pursuant to federal or state law.

## **SECTION 9. SERVICE EXCEPTIONS; HAZARDOUS WASTE NOTIFICATIONS.**

**9.1 Failure to Collect.** When Solid Waste is not collected from a Service Recipient, Contractor shall notify its Service Recipient, at the time collection is not made, through the use of a "tag" or otherwise, of the reasons why the collection was not made.

**9.2 Hazardous Waste Inspection and Reporting.** Contractor reserves the right to inspect Commercial Solid Waste put out for collection and to reject Solid Waste observed to be contaminated with hazardous waste and the duty not to collect such waste. Contractor shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found or observed. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Contractor will immediately notify the City Representative.

**9.3 Hazardous Waste Diversion Records.** Contractor shall maintain records showing the types and quantities, if any, of Hazardous Waste found in Commercial Solid Waste and which was inadvertently collected from Service Recipients within the City.

## **SECTION 10. CUSTOMER SERVICE**

**10.1 Office Hours.** Contractor shall maintain an office that provides toll-free telephone access and is staffed by trained and experienced Customer Service Representatives (CSRs). Such office shall be equipped with sufficient telephones that all Collection Service related calls received during normal business hours are answered and Contractor shall have responsible persons in charge during Collection hours. At a minimum, Contractor's office hours are to be from 8:00 a.m. to 5:00 p.m. Monday through Friday, except for days on which holidays are observed.

**10.2 Emergency Telephone Number.** Contractor will maintain an emergency telephone number for use outside normal business hours. Contractor shall have a representative or an answering or call-forwarding service to contact such representative, available at the emergency telephone number during all hours other than normal office hours.

**10.3 Service Complaints; Missed Collections.** City and Contractor agree that the protection of public health, safety and well-being require that service complaints be acted on promptly and that a record be maintained in order to permit City and Contractor to identify potential public health and safety problems. Accordingly, all Service Recipients' complaints shall be directed to Contractor. Contractor shall maintain a customer service log that includes the date, time, and complainant's name and address if the complainant is willing to give this information, and date and manner of resolution of complaint. Contractor shall maintain this information in a computerized daily Service Complaint Log. Contractor shall provide a copy of this Service Complaint Log to the City upon request.

**10.4 Website.** Contractor shall maintain a website for services provided and shall include answers to frequently asked questions for Solid Waste Collection and recycling services including Organic Waste. Contractor shall arrange for the City's website to include an e-mail link to Contractor and a link to Contractor's website. Contractor's website shall provide the public the ability to e-mail complaints to Contractor and request services or service changes.

## **SECTION 11. CONTRACTOR PROVIDED PUBLIC EDUCATION AND PUBLIC AWARENESS**

**11.1 Customer Education Program.** Contractor, at Contractor's sole expense, shall develop and implement an education program for the Commerce Commercial Waste Diversion program, with goals, strategies and timetables (at no additional cost to City or Service Recipients). The program will include information with respect to AB 341 and AB 1826 State-Mandated Commercial and Organic Waste Diversion requirements and services provided, Public Schools Waste Reduction, E-Waste, and safe disposal of Hazardous Waste. Contractor's efforts shall include, at the minimum, the following:

Annual Campaign. At least once per Agreement Year, Contractor will provide and distribute literature in the form of fliers, cards, stickers, magnets, newsletters, billing inserts or otherwise as Contractor and the City determines to be most effective in support of its obligation with respect to the achievement of the diversion rate required of the City. Contractor's literature shall describe the company's efforts to implement all mandated legislation, including but not limited to AB 341 and AB 1826.

Quarterly Reminders. Contractor shall include reminders in service account billings to establish recycling services. Contractor shall provide the City with copies of all education program materials.

New Service Brochure. Upon customer request, Contractor will prepare and distribute a brochure packet to new customers when they start service. This packet will contain updated information on how to use the Contractor-provided containers, when, where and how to place containers for Collection, and who to contact with service or billing questions.

HHW Awareness. Contractor shall either provide a separate brochure or include in Annual and Quarterly materials that target safe handling and disposal of Hazardous Wastes.

**11.2 Meetings with City Environmental Coordinator.** Contractor shall arrange to meet with the City's Environmental Coordinator on an annual basis to discuss progress implementing diversion and recycling programs and public outreach activities.

**11.3 Additional Public Education Efforts.** In the event that the City determines that the Customer Education Program is not effective, Contractor shall provide additional educational materials that are designed to increase diversion and participation in

Contractor's diversion programs. This may include efforts by Contractor to target certain Recyclable Materials or "problem" areas of Contractor's Service Area where improvements can be maximized. Targets of outreach should be based on local trends and recycling patterns. The City may review any such materials prepared by Contractor and request changes as necessary prior to distribution/mailing by Contractor.

## **SECTION 12. OWNERSHIP OF SOLID WASTE**

**12.1 Ownership and the right to possession of Commercial Solid Waste including Organic Waste and Recyclable Materials shall transfer directly from the Service Recipient to Contractor.**

## **SECTION 13. RATES AND BILLING.**

**13.1 Rates.** Contractor shall set rates through open competition among City-licensed commercial solid waste haulers. Contractor shall be responsible for the billing and collection of payments for all Collection Services.

**13.2 Semi-Exclusive Franchise Fee.** Contractor shall pay City an amount equal to fifteen percent (15%) of Contractor's Gross Revenues on a quarterly basis as a Semi-Exclusive Franchise Fee.

Franchise Fee Payment. As stated in the City's Municipal Code, Chapter 6.06 Refuse Management §6.06.070 Licensed Haulers Fee, Payment and Penalties, licensed hauler fees are payable to the city quarterly and are a percentage of contractor's gross receipts for residential and commercial refuse and/or recycling material arising out of the performance of services, including, but not limited to charges and receipts from recycling salvage or reclamation.

Contractor shall file, on or before renewal of contractor's business license, with the director of finance, a written audited statement of gross receipts ("statement") in a form approved by the Director of Finance, prepared by the contractor's controller or financial officer or a certified public accountant, showing all such gross receipts actually received by contractor during the preceding quarter. Such statement shall accompany the quarterly licensed hauler fee payment.

Penalties shall be assessed as follows:

- Ten percent penalty for payments thirty days past due;
- Twenty-five percent penalty for payment sixty days past due; with
- Interest on the amount of the non-exclusive hauler fee payment will be prime rate plus 5.25% per annum.

The penalty and interest charges are subject to change by city council resolution as part of the city's policy on delinquent contractor's books and records, at any reasonable time, to verify the accuracy of the contents of any statement. The director of finance may order an audit of contractor's books and records to determine the accuracy of the contents of any statement; if any such city-ordered audit discloses an understated amount of gross receipts on any statement equaling three percent or more, the cost of the audit shall be borne by the contractor and may be grounds for termination of the hauler's business license and agreement as determined by the City. In all other cases, such an audit shall be borne by the city.

Diversion Data. Contractor is responsible for submitting accurate monthly diversion data in a format provided by the City. Failure to do so on a monthly basis may be grounds for

termination of the hauler's business license and agreement as determined by the City.

## **SECTION 14. DIVERSION REQUIREMENTS AND GUARANTEE**

A fundamental and material part of the Agreement between the City and Contractor is the requirement to achieve a minimum annual diversion rate as set forth below.

**14.1 Minimum Diversion Requirements.** Beginning the effective date of Agreement and each fiscal year beginning July 1<sup>st</sup> thereafter throughout the term of this Agreement, Contractor shall implement California State-mandated Commercial Recyclable Materials and Organic Waste diversion programs that achieve the goals set forth by Applicable Laws including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements governing this Agreement (including AB 341, AB 1594, AB 1826, and all amendments and related subsequent legislation).

Familiarity with City Waste Stream. Contractor represents that it is aware of and familiar with City's waste stream, and that it has the ability to and will provide sufficient programs and services to ensure City will meet the State's Mandatory Commercial and Organics Waste Recycling Requirements.

AB 341 and AB 1826 Commercial and Multi-Family Outreach and Waste Assessments. Contractor will conduct on-site waste assessments and provide outreach materials to applicable Commercial and Multi-family Service Units each year. Contractor shall report to the City on a monthly basis the specific Commercial and/or Multi-family Service Units that the on-site waste assessments were conducted at, the results of the waste assessment, and changes made to Solid Waste, Recyclables, or Organics collection services to ensure that all Commercial and Multi-Family Service Units comply with AB 341 and AB 1826.

**14.2 Guarantee and Indemnification.** Contractor warrants and guaranties that it will carry out its obligations under this Agreement in a manner consistent with Applicable Laws including specifically AB 341 AB 1594, and AB 1826, and Contractor's actions will provide for the City to meet the State-mandatory requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in Applicable Laws including AB 341, AB 1594, and AB 1826, and all amendments thereto. In this regard Contractor agrees that, in addition to any other requirement contained herein, at its sole cost and expense it will do the following:

- a. To the extent legally permitted, defend, with counsel approved by City, indemnify, and hold harmless City and City's officials, employees, and agents from and against all fines and/or penalties and other liabilities which may be imposed by CalRecycle or any other regulatory or enforcement agency if: (1) Contractor fails or refuses to timely provide information relating to its operations which is required pursuant to this Agreement or the Applicable Laws and such failure or refusal prevents or delays City from submitting reports required by the Applicable Laws including AB 341, AB 1594, and AB 1826 in a timely manner.
- b. Assist City in responding to inquiries from CalRecycle or any other regulatory agency.
- c. Assist City in preparing for, and participating in, the CalRecycle's biannual review of City's recycling programs.
- d. Develop and implement a public awareness and education program to achieve goals related to mandated commercial solid waste diversion and recycling program requirements of aforementioned Applicable Laws.

- e. Provide City technical assistance as may be needed to comply with the Applicable Laws.
- f. Be responsible for and pay, any fees, penalties or other costs imposed against the City by CalRecycle or any other regulatory or enforcement agency, and indemnify and hold harmless City from and against any fines, penalties, or other liabilities, levied against it for violation of the diversion requirements, set forth in the Applicable Laws for services provided by Contractor under the terms of this Agreement, including AB 341, AB 1594 and AB 1826, or for violation of any other provision of the Applicable Laws, including AB 341, AB 1594 and AB 1826, arising from or in any way related to Contractor's performance of its obligations under this Agreement.

**14.3 Failure to Meet Diversion and Reporting Requirements.** In the event that Contractor is not meeting the mandated diversion and reporting requirements, at the City's sole discretion, the City may terminate this Agreement by issuing written notice to Contractor of early termination due to Contractor's failure to meet diversion and reporting requirements. The City will consider the good faith efforts put forth by Contractor to meet the diversion and reporting requirements. This consideration will include the methods and level of effort of Contractor to fully implement the public education and diversion plans, efforts to provide recycling and Organic Waste diversion programs to all Commercial and Multi-family Service Units.

## **SECTION 15. CONTRACTOR'S BOOKS AND RECORDS.**

Contractor shall maintain all records relating to the services provided hereunder, including, but not limited to customer service levels, billing records, implemented diversion programs and weight tickets of recyclables, and customer complaints, for the full term during which Collection Services are to be provided pursuant to this Agreement, and an additional period of not less than three (3) years, or any longer period required by law. The City shall have the right, upon reasonable advance notice, to inspect, audit and copy all records relating to this Agreement. In the absence of extraordinary circumstances, two (2) business days' notice shall be considered reasonable. Such records shall be made available to City at Contractor's regular place of business, but in no event outside the County of Los Angeles. In the event City decides to use a competitive process for the award of an exclusive franchise for collection of Solid Wastes after the expiration of this franchise, Contractor agrees to cooperate with City in making route maps; customer lists, billing records, weight tickets and other relevant operating or customer services records available for inspection by prospective proposers during the competitive process.

Should any examination or audit of Contractor's records reveal an underpayment to City by Contractor, the amount, plus interest compounded daily at the maximum lawful rate, shall be paid to City within thirty (30) days.

Where City has reason to believe that such records or documents may be lost or discarded due to the dissolution, disbandment or termination of Contractor's business, City may, by written request or demand of any of the above named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives or Contractor's successor-in-interest.

Other Records. Contractor shall maintain all other records reasonably related to provision of Collection and Recycling Services, whether or not specified in this section or elsewhere

in this Agreement.

## **SECTION 16. REPORTS AND INFORMATION**

Contractor, at no additional expense, shall submit to the City such other information or reports in such forms and at such times as the City may reasonably request or require, including, but not limited to the following Monthly, Quarterly, and Annual Reports.

### **16.1 Monthly Reports.**

Monthly Reporting Requirements. Monthly reports shall be submitted to the City Representative no later than thirty (30) calendar days after the end of the reporting month. Monthly reports shall be submitted electronically via e-mail to the City in a format provided by the City as attached.

AB 341 and 1826 Compliance Data. Contractor shall report the total number of Commercial and/or Multi-family Service Units serviced and the number of containers, container sizes and frequency of collection for Solid Waste, Recyclable Materials and Organic Waste for each of Commercial and/or Multi-family Service Unit.

### **16.2 Quarterly Reports.**

Gross Revenue, Semi-Exclusive Franchise Fees, and Vehicle Impact Fees. A summary of the reporting period's gross revenues received, franchisee fees owed for reporting period with corresponding check for the amount owed, and vehicle impact fees due, if any.

Quarterly Reporting Requirements. Quarterly reports shall be submitted to the City Representative no later than thirty (30) calendar days after the end of the reporting quarter. Quarterly reports shall be submitted electronically via e-mail to the City's Finance Department.

Certification. Contractor will provide a certification statement, under penalty of perjury, by the responsible corporate official, that the report is true and correct.

### **16.3 Annual Reports.**

Annual Reporting Requirements. Annual reports shall be submitted to the City Representative no later than April 1st after the end of each preceding calendar year. Annual reports shall be submitted electronically via e-mail to the City. Annual Reports shall include the following:

General Information. An updated list of Contractor's key members and contact information. A copy of Contractor's most recent annual financial reports and those of each of its subsidiaries, affiliated corporations and other entities if any, performing services under this Agreement.

Equipment Inventory. Updated complete inventory of collection vehicles by type, size, and quantity.

Public Education and Information Activities. Public education and information activities undertaken during the year, including distribution of newsletters, billing inserts, other notices, Collection notification tags, community information and events, tours and other activities related to the provisions of services.

Additional Reporting. Contractor shall furnish the City with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period.

**16.4 Costs.** All reports and records required under this Agreement shall be furnished at the sole expense of Contractor.

**16.5 Submission of Reports.** Reports shall be submitted to:

Environmental Coordinator at: [mkeshishian@ci.commerce.ca.us](mailto:mkeshishian@ci.commerce.ca.us)

**16.6 City's Right to Request Information.** City reserves and Contractor agrees to provide additional information reasonably and directly pertaining to this Agreement on an "as-needed" basis.

**16.7 CERCLA Defense Records.** City views the ability to defend against CERCLA and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Commercial Solid Waste Collected in the City of Commerce was taken for disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where such waste collected in the City was landfilled and a copy or summary of the reports required herein for five (5) years after the term of the Agreement or to provide copies of such records to City. Contractor agrees to notify the City Clerk and City Attorney before destroying such records. This provision shall survive the expiration of the period during which Collection Services are to be provided under this Agreement.

## **SECTION 17. INDEMNIFICATION AND INSURANCE.**

**17.1 Indemnification of the City.** Contractor shall defend, with counsel acceptable to the City, indemnify and hold harmless, to the fullest extent allowed by law, City, its officers, officials, employees, volunteers agents and assignees (indemnities), from and against any and all loss, liability, penalties, forfeitures, claims, demands, actions, proceedings or suits, in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from or in any way connected with: (i) the City's grant of this franchise to Contractor; (ii) the operation of Contractor, its agents, employees, contractors, and/or subcontractors, in exercising the privileges granted to it by this Agreement; (ii) the failure of Contractor, its agents, employees, contractors, and/or subcontractors to comply in all respects with the provisions and requirements of this Agreement, applicable laws, ordinances and regulations, and/or applicable permits and licenses; and (iii) the acts of Contractor, its agents, employees, contractors, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law. The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, action, suit injury, death or damage is also caused in part by any of the indemnitees' active or passive negligence.

Contractor's obligation to defend, hold harmless, and indemnify shall not be excused because of Contractor's inability to evaluate Liability or because Contractor evaluates Liability and determines that Contractor is not liable to the claimant. Contractor must respond within thirty (30) days to the tender of a claim for defense and indemnity by the City, unless this time has been extended by the City. If Contractor fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due Contractor by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until final disposition has been made or the claim or suit for damages, or until Contractor accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against Contractor, Contractor waives any and all rights of any type to express or implied indemnity against the Indemnities. The indemnity provisions of this SECTION shall survive the expiration of the period during which Collection Services are to be provided under this Agreement.

**17.2 Hazardous Waste/Substances Indemnification.** Contractor shall indemnify, defend



with counsel acceptable to the City, protect and hold harmless the City, its officers, officials, employees, agents, assigns and any successor or successors to the City's interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, hazardous materials response mediation and removal costs, losses, demands, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the foregoing or enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against City or its officers, officials, employees, agents, assigns, or contactors arising from or attributable to acts or omissions including but not limited to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes at any place where Contractor transports, transfers, processes, stores, or disposes of Garbage, refuse or any other materials pursuant to this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section 25364, to defend insure, protect, hold harmless and indemnify the City from liability under CERCLA, RCRA, other statutes or common law for any and all matters addressed in this SECTION.

Contractor shall defend with counsel acceptable to the City, hold harmless, and indemnify City, its officers, officials, employees, volunteers, agents and assignees (indemnitees) from and against any loss, liability, penalties, forfeiture, claims, damages, demands, actions, proceedings or suits, in law or equity, of every kind and description, arising from the City's review and approval of maximum Service Rates for Collection Services under this Agreement and/or in connection with the application of Article XIIC and Article XIID of the California Constitution to the imposition, payment, or collection of Service Rates and fees for services provided by Contractor under this Agreement, and/or in connection with the imposition or payment of Semi-Exclusive Franchise Fees under this Agreement.

**17.3 Separate Counsel.** City may elect to have separate legal counsel from Contractor at any time at its sole discretion, and in such case Contractor will pay all reasonable fees and costs and charges for such separate legal counsel.

**17.4 Consideration.** It is specifically understood and agreed that the consideration inuring to Contractor for the execution of this Agreement consists of the promises, payments, covenants, rights and responsibilities contained in this Agreement.

**17.5 Obligation.** The execution of this Agreement by Contractor shall obligate Contractor to comply with the foregoing indemnification provisions; however, the collateral obligation of providing insurance must also be fully complied with as set forth in SECTION 17.10.

**17.6 Subcontractors.** Contractor shall require all subcontractors to enter into an agreement containing the provisions set forth SECTIONS 17.1 through 17.10 and SECTIONS 18.1 through 18.3 in its entirety and in the preceding subsection in which agreement the subcontractor fully indemnifies the City in accordance with this Agreement.

**17.7 Exception.** Notwithstanding SECTIONS 17.1, 17.2 and 17.3, Contractor's obligation to indemnify, hold harmless and defend City, its officers and employees shall not extend to any loss, liability, penalty, plain, damage, action or suit arising or resulting solely from acts or omissions constituting willful misconduct or sole negligence on the part of the City its officers or employees.

**17.8 Damage by Contractor.** If Contractor's employees or subcontractors cause any injury, damage or loss to City property, including but not limited to City streets or curbs,

Contractor shall reimburse City for City's cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of City to be indemnified by Contractor for any such injury, damage or loss. With the prior written approval of City, Contractor may repair the damage at Contractor's sole cost and expense.

**17.9 Environmental Indemnification.** Contractor shall indemnify, defend, protect and hold harmless City, its elected officials, officers, employees, volunteers, agents, assigns and any successor or successors to City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its elected officials, officers, employees, volunteers or agents 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 in any Residential, Commercial and/or City Waste collected by Contractor pursuant to this Agreement, which is or has been transported, transferred, processed, stored, disposed of which has otherwise come to be located by Contractor, or its activities pursuant to this Agreement result in a release of a hazardous waste into the environment.

With respect Commercial Solid Waste collected by Contractor pursuant to this Agreement which has been disposed of at places not owned or operated by Contractor, (1) Contractor may cause the owner or operator of the alternate facility to deliver a Hazardous Substances Indemnification if satisfactory to City or (2) Contractor shall provide hazardous substances indemnification, as above, or provide any combination of indemnification by the alternate facility and a Contractor indemnification satisfactory to City upon request. Upon delivery and during the effective period of the Hazardous Substances Indemnification by an alternate facility, such facility shall be considered an "Indemnifying Alternative Facility."

This indemnity is intended to operate as an agreement pursuant to § 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA," 42 U.S.C. § 9607(e), and California Health and Safety Code § 25364; to defend, protect, hold harmless and indemnify City from all forms of liability under CERCLA, RCRA, other statutes or common law for any and all matters addressed in this SECTION, and shall be limited to the extent of the City's liability. This provision shall survive the expiration of the period during which Collection Services are to be provided under this Agreement.

**17.10 Insurance Policies.** As set forth in Exhibit C – Insurance Requirements, Contractor shall secure and maintain throughout the term of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with Contractor's performance of work or services under this Agreement. Contractor's performance of work or services shall include performance by Contractor's employees, agents, representatives and subcontractors.

## **SECTION 18. PERFORMANCE BOND**

Fifteen (15) days prior to the City's execution of this agreement, Contractor shall provide a letter of credit or performance bond (collectively "performance bond") in an amount equal to one month of franchise fee payment or the amount of fifteen thousand dollars

(\$15,000), whichever is greater in a manner as set forth below. The bond or security must be replenished within ten (10) days from any draw by the City. The City may draw upon the bond or security after five (5) days written notice to Franchisee. The remaining bond or security will be returned to the Franchisee by the City upon termination of the Franchise.

**18.1 Performance Bond.** The performance bond shall be executed by a surety company that is acceptable to the City; an admitted surety company licensed to do business in the State of California; has an "A:VII" or better rating by A. M. Best or Standard and Poors; and is included on the list of surety companies approved by the Treasurer of the United States. The Performance Bond shall be on terms and in a form acceptable to the City Attorney. The Performance Bond shall serve as security for the faithful performance by Contractor of all the provisions and obligations of this Agreement.

**18.2 Letter of Credit.** At City's option, Contractor may deposit with City an irrevocable letter of credit in an amount as set forth in SECTION 18. If allowed, the letter of credit must be issued by an FDIC insured banking institution chartered to business in the state of California, in the City's name, and be callable at the discretion of the City. Nothing in this SECTION shall, in any way, obligate the City to accept a letter of credit in lieu of the performance bond.

**18.3 Cash Bond.** At the City's option Contractor may deposit with the City a Cash Bond in an amount as set forth in SECTION 20.1. If allowed, the Cash Bond must be deposited in an FDIC insured banking institution chartered to business in the State of California, in the City's name, and be callable at the discretion of the City. Nothing in this SECTION shall, in any way, obligate the City to accept the Cash Bond in lieu of the performance bond. All interest on the Cash Bond shall accrue to Contractor.

**18.4** Upon Contractor's failure to pay the City an amount owing under this Agreement, the Performance Bond may be assessed by the City, for purposes including, but not limited to:

Reimbursement of costs borne by the City to correct violations of the Agreement not corrected by Contractor, after City provides notice in accordance with SECTION 20.

To provide monetary remedies or to satisfy damages assessed against Contractor due to a material breach of this Agreement; or

To satisfy any order of an arbitrator, referee, judge or other party having authority to determine disputes arising from this agreement.

Contractor shall deposit a replacement instrument sufficient to restore the Performance Bond to the original amount within thirty (30) days after notice from the City that any amount has been levied against the Performance Bond. Contractor shall be relieved of the foregoing requirement to replenish the Performance Bond during the pendency of an appeal from the City's decision to draw on the Performance Bond.

In the event the City draws on the Performance Bond, all of City's costs of collection and enforcement of the provisions relating to the Performance Bond called for by this SECTION 18, including reasonable attorneys' fees and costs, shall be paid by Contractor.

Any decision or order of City under this SECTION 18 may be appealed by Contractor through the dispute resolution procedures provided in SECTION 20 of this Agreement.

## **SECTION 19. EMERGENCY SERVICE.**

Should Contractor for any reason whatsoever, except the occurrence or existence of any

of the events or conditions set forth below as "Force Majeure" for a period of more than forty-eight (48) hours, refuse or be unable to collect a material portion or all of the Commercial Solid Waste which it is obligated under this Agreement to collect, and as a result, such waste should accumulate in City to such an extent, in such a manner, or for such a time that the City Representative in the reasonable exercise of the City Representative's discretion, should find that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right to assign collection and transportation to another Contractor any of the waste which Contractor is obligated to collect and transport pursuant to this Agreement, but which Contractor is unable or fails to collect and transport. City shall provide twenty-four (24) hours prior written notice to Contractor.

Contractor will assist City in the event of major disaster, such as an earthquake, storm, fire, riot or civil disturbance, by providing collection vehicles and drivers as needed throughout the City. Contractor shall cooperate with City, county, state and federal officials in filing information related to a regional, state or federally-declared state of emergency or disaster for which Contractor has provided equipment and drivers pursuant to this Agreement.

## **SECTION 20. ADMINISTRATIVE REMEDIES; TERMINATION.**

### **20.1 Notice; Response; Resolution; Appeal.**

Notice of Deficiencies; Response. If the City Representative determines that Contractor's performance pursuant to this Agreement may not be in conformity with the provisions of this Agreement including, but not limited to, requirements for diversion, source reduction and recycling as to the waste stream subject to this Agreement or any other applicable federal, state or local law or regulation, including but not limited to, the laws governing transfer, storage or disposal of solid and Hazardous Waste, the City Representative may advise Contractor in writing of such suspected deficiencies, specifying the deficiency in reasonable detail. The City Representative, in any written Notification of Deficiencies, shall set a reasonable time within which Contractor is to respond. Unless the circumstances necessitate correction and response within a shorter period of time, Contractor shall correct the deficiencies and respond to the written Notification of Deficiencies within thirty (30) days from the receipt by Contractor of such written notice. Contractor may request additional time to correct deficiencies. City shall approve reasonable requests for additional time.

Review by City Representative; Notice of Appeal. The City Representative shall review any written response from Contractor and shall decide the matter. If the City Representative's decision is adverse to Contractor, the City Representative may order remedial actions to cure any deficiencies, assess the Performance Bond or invoke any other remedy in accordance with this Agreement and, in the event the City Representative determines that there has been a material breach and that termination is the appropriate remedy, terminate the Agreement. In addition to the foregoing actions, the City Representative may refer the matter to the City Council for execution. The City Representative shall promptly inform Contractor of the City's decision. In the event the decision is adverse to Contractor, the City Representative shall inform Contractor, in writing, of the specific facts found and evidence relied on, and the legal basis in provisions of the Agreement or other laws for the City Representative's decision and any remedial action taken or ordered.

An adverse decision by the City Representative shall be final and conclusive unless Contractor files a "Notice of Appeal to the City Council" with the City Clerk (and serves a copy, by mail, to the City Representative and the City Attorney) within 10 days of receipt

of the decision of the City Representative. A "Notice of Appeal to the City Council" shall state the factual basis and all legal contentions and shall include all relevant evidence, including affidavits and documents Contractor may choose to submit.

**20.2 City Council Hearing.** If a matter is referred by the City Representative to the City Council, or an adverse decision of the City Representative is appealed to the City Council by Contractor, the City Council will set the matter for an administrative hearing noticed pursuant to the Brown Act and act on the matter. The City Clerk shall give Contractor written notice of the time and place of the administrative hearing. At the hearing, the City Council shall consider the administrative record, consisting of the following:

1. A Staff Report by the City Representative, summarizing the proceedings to date and outlining the City Council's options;
2. The Representative's written Notification of Deficiencies with supporting documentation;
3. Contractor's response to the Notification of Deficiencies with supporting documentation;
4. The City Representative's written notification to Contractor of adverse decision; and
5. Contractor's Notice of Appeal to the City Council.

No new legal issues may be raised, nor may new evidence be submitted by Contractor or City at this hearing, or at any further point in the proceedings, absent a showing of good cause. City, Contractor's representatives and other interested persons shall have a reasonable opportunity to be heard.

**20.3 City Council Determination.** Based on the administrative record, the City Council shall determine by resolution supported by written findings whether the decision or order of the City Representative should be upheld. If, based upon the administrative record, the City Council determines that the performance of Contractor is in breach of any term of this Agreement or any provision of any applicable federal, state or local statute or regulation, the City Council, at its discretion, may order Contractor to take remedial actions to cure the breach or impose any other remedy in accordance with this Agreement. Contractor's performance under the Agreement is not excused during the period of time prior to a final determination as to whether or not Contractor performance is in material breach of this Agreement, or the time set by City for Contractor to discontinue its services pursuant to this Agreement.

**20.4 Reservation of Rights by City.** City further reserves the right to terminate this Agreement in the event of any material breach of this Agreement, including, but not limited to any of the following:

If Contractor practices, or attempts to practice, any fraud or deceit upon the City, or practiced any fraud or deceit or made any intentional misrepresentations in the negotiations which preceded the execution of this Agreement;

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

If Contractor fails to provide or maintain in full force, effect and amount, any and all licenses, insurance policies and Performance Bonds as required by this Agreement;

If Contractor violates any orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement, in any material manner, provided that Contractor

may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until a final decision adverse to Contractor is entered;

If Contractor ceases to provide Collection Service as required under this Agreement over all or a substantial portion of the City for a period of two (2) calendar days or more, for any reason within the control of Contractor;

If Contractor fails to make any payments required under this Agreement or refuses to provide City with required information or reports in a timely manner as provided in this Agreement;

If Contractor fails to achieve diversion levels for the waste stream covered by this Agreement at levels sufficient to achieve the diversion goals required of the City, as determined by CalRecycle or City determines that the City has or will fail to meet its diversion goals, Contractor shall have an opportunity to cure this material breach, within the time allotted by CalRecycle or City.

When the operations of Contractor shall be contrary to the public health, safety, well-being, peace, welfare or shall be found to constitute a public nuisance;

If Contractor violates any material federal or state law, regulation of CalRecycle, a local enforcement agency, the City Municipal Code, or any material condition of the Agreement affecting public health and safety in the City; or,

Any other act or omission by Contractor which materially violates the terms, conditions or requirements of this Agreement and which is not corrected or remedied within the time set forth in the written Notification of Deficiencies or if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such alleged deficiencies within the time set forth in such notice and diligently effect such correction or remedy thereafter.

**20.5 Cumulative Rights.** City's rights of termination are in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement.

## **SECTION 21. QUALITY OF PERFORMANCE OF CONTRACTOR.**

**21.1 Intent.** Contractor acknowledges and agrees that one of City's primary goals in entering into this Agreement is to ensure that the Collection Services are of the highest caliber, that Service Recipient satisfaction remains at the highest level, that maximum diversion levels are achieved, and that materials collected are put to the highest and best use to the extent feasible.

**21.2 Service Supervisor.** Contractor has designated a supervisor to be in charge of the Collection Service within the Service Area. At least thirty (30) calendar days prior to replacing the designated supervisor, Contractor shall notify City in writing of the name and contact information of the new service supervisor. Contractor shall ensure that such replacement is an individual with like qualifications and experience. The supervisor shall be available to the City Representative through the use of a mobile telephone at all times that Contractor is providing Collection Services. In the event the supervisor is unavailable due to illness or vacation, Contractor shall designate an acceptable substitute who shall be available and who has the authority to act in the same capacity as the supervisor. The service supervisor shall provide the City with an emergency phone number where the supervisor can be reached outside of normal business hours.

## **SECTION 22. FINANCIAL AUDITS**

**Contractor's Cooperation.** The City may request Contractor to make available any or all records related to performance under the Agreement with the City to an independent auditor or examiner, to be selected by the City, for auditing and examination purposes ("Discretionary Audit"). Contractor shall cooperate fully and provide all requested data to the City within thirty (30) Works Days. Failure of Contractor to cooperate and provide the requested documents in the required time shall be considered an event of default. The City shall determine the scope of the Discretionary Audit and at a minimum shall include compliance with the terms of the Agreement, customer service levels and billing, franchise fee payments, gross receipts, refuse and recycling tonnages collected, commercial recycling services provided, diversion rates achieved, and reported on a monthly basis.

**Schedule.** The first Discretionary Audit may be performed in 2019 and shall be based on Contractor's reports and records through Fiscal Year ending June 30, 2018.

**Costs.** The City shall bare the cost of the Discretionary Audit unless findings should cause further examination and extraordinary time and effort to assess the Contractor's performance with the terms of this Agreement.

## **SECTION 23. MODIFICATIONS TO THE AGREEMENT**

**23.1 Agreement Modifications and Changes in Law.** The City and Contractor understand and agree that the California Legislature has the authority to make comprehensive changes in Solid Waste, Recyclable Materials, or Organic Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for the City may require changes or modifications in some of the terms, conditions or obligations under this Agreement. Contractor agrees that the terms and provisions of the Municipal Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Agreement and the Service Recipients of Contractor located within the Service Area. In the event any future change in law, modifications to the City Municipal Code, or directed changes by the City materially alters the obligations of Contractor, then the affected compensation as established under this Agreement shall be adjusted. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. The City and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law.

**23.2 City-Directed Changes.** City may direct Contractor to perform additional services (including new diversion programs and additional public education activities and reporting). Contractor acknowledges that City may permit other contractors or companies besides Contractor to provide additional Collection Services under this Semi-Exclusive Agreement.

**23.3 Monitoring and Evaluation.** If the City requests, Contractor shall meet with the City to describe the progress of each existing or new program and service issues. If applicable, Contractor shall document the results of the new programs on a monthly basis, including at a minimum the tonnage diverted by material type, the end use or processor of the diverted materials and the cost per ton for transporting and processing each type of material and other such information requested by Contractor and/or City necessary to evaluate the performance of each program.

At each meeting, the City and Contractor shall have the opportunity to discuss revisions to the program up to and including termination of a program/service if goals and objectives are not met. Prior to such termination, the City shall meet and confer with Contractor for a period of up to ninety (90) calendar days to resolve the City's concerns.

Thereafter, the City may utilize a third party to perform these Contractor shall continue the program during the ninety (90) day period and, thereafter, until the third party assumes the program/service.

#### **SECTION 24. FRANCHISE TRANSFER; CITY CONSENT; FEES.**

Contractor may not convey, assign, sublet, license, hypothecate, encumber or otherwise transfer or dispose of this Agreement, the Semi-Exclusive Franchise granted under it or any rights or duties under it, in whole or in part, and whether voluntarily or involuntarily (collectively "Transfer"), without the City's prior written consent as expressed by written resolution of the City Council. Any dissolution, merger, consolidation, or other reorganization of Contractor, any sale of other transfer or change in ownership or control of any of the capital stock or other capital or equity interests in either or both of them, or any sale or transfer of fifty percent (50%) or more of the value of the assets of either or both of them shall be deemed a Transfer of this Agreement, the franchise granted under it or any rights or duties under it. Any Transfer or attempted Transfer of this Agreement, the franchise granted under it or any rights or duties under it made without the City's written consent will be a material breach of this Agreement and null and void.

The City may exercise its sole and absolute discretion in allowing or disallowing a Transfer, and has no obligation to give its consent to a Transfer.

#### **SECTION 25. GENERAL PROVISIONS.**

**25.1 Force Majeure.** Contractor shall not be in default under this Agreement in the event that the collection, transportation and/or disposal services of Contractor are temporarily or permanently interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting the City of Commerce; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; strikes, lockouts and other labor disturbances; or other catastrophic events which are beyond the reasonable control of Contractor. "Other catastrophic events" does not include the financial inability of Contractor to perform or failure of Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public entity where such failure occurs where Contractor has failed to exercise reasonable diligence.

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

**25.3 Pavement Damage.** Normal wear and tear on City streets resulting from general vehicular traffic excepted, Contractor shall be responsible for damage to City's driving surfaces, whether or not paved, resulting from the operation of Contractor's vehicles providing Solid Waste and Recycling Services within the City. Contractor understands that the exercise of this franchise may involve operation of its collection vehicles over private roads and streets. Disputes between Contractor and its Service Recipients as to damage to private pavement are civil matters and complaints of damage will be referred to Contractor as a matter within its sole responsibility.



**25.4 Property Damage.** Any physical damage caused by the negligent or willful acts or omissions of employees of Contractor to public or private property shall be repaired or replaced by Contractor at Contractor's sole expense.

**25.5 Law to Govern; Venue; Jury Trial Waiver.** The laws of the State of California shall govern this Agreement without regard to any otherwise governing principles of conflicts of laws. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles. In the event of litigation in a U.S. District Court exclusive venue shall lie in the Central District of California. Contractor waives its right to jury trial.

**25.6 Compliance with Laws.** In the performance of this Agreement, Contractor shall comply with all applicable laws, regulations, ordinances and codes of the federal, state and local governments, including without limitation the Municipal Code of the City of Commerce.

City shall provide written notice to Contractor of any planned amendment of the City Municipal Code that would substantially affect the performance of Contractor's services pursuant to this Agreement.

**25.7 Amendments.** All amendments to this Agreement shall be in writing and duly executed by the parties. Purported oral amendments shall be void and of no force or effect.

**25.8 Corporate Status.** Contractor is a California Corporation duly organized, validly existing and in good standing under the laws of the State of California (State). It is qualified to transact business in the State and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

**25.9 Corporate Authorization.** Contractor has the authority to enter this Agreement and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of Contractor represents and warrants that they have the authority to do so. This Agreement constitutes the legal, valid, and binding obligation of Contractor.

**25.10 No Litigation.** To the best of Contractor's knowledge after responsible investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate would:

Materially adversely affect the performance by Contractor of its obligations hereunder; adversely affect the validity or enforceability of this Agreement; or have a material adverse effect on the financial conditions of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement; or

**25.11 No Adverse Judicial Decisions.** To the best of Contractor's knowledge after responsible investigation, there is no judicial decision that would prohibit this Agreement or subject this Agreement to legal challenge.

**25.12 No Legal Prohibition.** To the best of Contractor's knowledge after reasonable investigation, there is no Applicable Law in effect on the date Contractor signed this Agreement that would prohibit Contractor's performance of its obligations under this Agreement and the transactions contemplated hereby.

**25.13 Contractor's Investigation.** Contractor has made an independent investigation

(satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Contractor has taken such matters into consideration in entering this Agreement to provide services provided for under the terms of this Agreement.

**25.14 Ability to Perform.** Contractor possesses the business, professional, and technical expertise to Collect, Transport, and Process Solid Waste, Recyclable Materials, and Organic Waste, generated by commercial businesses and multi-family units with 5 or more units in the City. Contractor possesses the ability to secure equipment, facility(ies), and employee resources required to perform its obligations under this Agreement.

**25.15 Nondiscrimination.** In the performance of all work and services under this Agreement, Contractor shall not discriminate against any person on the basis of such person's race, sex, color, national origin, religion, marital status, age, disability or sexual orientation. Contractor shall comply with all applicable local, state and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

**25.16 Notices.** All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by email or United States certified mail, postage prepaid, return receipt requested. Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

To City:           City of Commerce  
                      Attn: City Administrator  
                      2535 Commerce Way  
                      Commerce, CA 90040

To Contractor:   Arakelian Enterprises, Inc. dba Athens Services  
                      Attn: Executive Vice President  
                      15045 Salt Lake Avenue  
                      City of Industry, CA 91746

Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice. Email transmission is acceptable notice, effective when received. Email transmissions received after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. Receipt is deemed to have taken place within three (3) working days of notice mailed by U.S. Postal Service return receipt requested. The original of items that are transmitted by email must also be mailed as required herein.

Notice by City to Contractor of a Collection or other Service Recipient problem or complaint may be given to Contractor orally by telephone at Contractor's local office or emailed to Contractor's designee with confirmation sent as required above by the end of the Work Day.

**25.17 Permits and Licenses.** Contractor shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Agreement. Contractor shall provide proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such

permits, licenses and approvals upon the request of the City Representative

**25.18 Waiver.** Waiver by City or Contractor of any breach for violation of any term covenant or condition of this Agreement shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by City of any fee, tax, or any other monies which may become due from Contractor to City shall not be deemed to be a waiver by City of any breach for violation of any term, covenant or condition of this Agreement.

**25.19 Savings Clause and Entirety.** If any non-material provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

## **SECTION 26. FINANCIAL INTEREST**

**26.1 Representation.** Contractor warrants and represents that no elected official, officer, agent or employee of the City has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no City employee who acts in the City as a purchasing agent, nor any elected or appointed officer of the City, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of Contractor and, further, that no such City employee, purchasing agent, City elected or appointed officer, or the spouse or child of any of them, alone or in combination, has an interest in Contractor.

## **SECTION 27. TRANSITION TO NEXT CONTRACTOR**

In the event Contractor is not awarded a new contract to continue to provide Commercial Solid Waste and Recycling Services following the expiration or early termination of this Agreement, Contractor shall cooperate fully with City and any subsequent contractors to assure a smooth transition of services described in this Agreement. Such cooperation shall include but not be limited to providing routing information, route maps, list of Service Recipients and service levels; providing a complete inventory of all carts and bins; providing adequate labor and equipment to complete performance of said Services required under this Agreement; taking all actions necessary to remove Contractor-owned carts and bins, as appropriate.

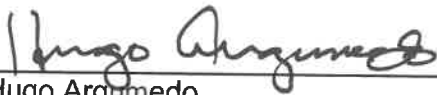
## **SECTION 28. SEVERABILITY**

If any provision of this Agreement or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF COMMERCE,  
a Municipal Corporation  
State of California

CONTRACTOR


  
\_\_\_\_\_  
Hugo Argumedo  
Mayor

  
\_\_\_\_\_  
Gary M. Clifford  
Executive Vice President  
Arakelian Enterprises, Inc. d/b/a  
Athens Services

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Lena Shumway  
City Clerk

  
\_\_\_\_\_  
Norma Copado  
City Attorney