

**CITY OF OAKLAND
AGENDA REPORT**

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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

2004 APR 22 PM 1:06

RE: **RESOLUTION AUTHORIZING THE FIFTH AMENDMENT TO THE FRANCHISE AGREEMENT FOR SOLID WASTE AND YARD WASTE COLLECTION AND DISPOSAL SERVICES WITH WASTE MANAGEMENT OF ALAMEDA COUNTY AND AUTHORIZING WEEKLY SINGLE STREAM RESIDENTIAL RECYCLING COLLECTION AND PROCESSING SERVICES IN THE SOUTHERN HALF OF THE CITY; WEEKLY YARD WASTE COLLECTION; AND WEEKLY RESIDENTIAL FOOD SCRAPS RECYCLING THROUGHOUT THE CITY FROM JANUARY 1, 2005 THROUGH DECEMBER 31, 2012 IN AN INITIAL AMOUNT OF APPROXIMATELY \$2,957,000 PER YEAR**

SUMMARY

A resolution has been prepared that authorizes the City Manager to enter into the Fifth Amendment to the Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services (Franchise Agreement) with Waste Management of Alameda County (WMAC) to provide weekly single stream residential recycling collection and processing services in the area generally south and east of East 18th Street, Park Boulevard, Lincoln Avenue and Joaquin Miller Road. There are approximately 75,000 single-family and multi-family housing units in the service area.

The Fifth Amendment also authorizes WMAC to provide weekly yard waste collection and weekly food scraps recycling throughout the City. The Fifth Amendment is to cover the period from January 1, 2005 through December 31, 2012. WMAC will receive approximately \$2,957,000 in additional revenue during the first year of the Franchise Agreement amendment. Of this amount, \$926,000 is for weekly single stream recycling service and the balance of \$2,031,000 is for weekly yard waste and food scraps collection. The cost of the amendment may increase in future years based upon annual changes in the Consumer Price Index (CPI).

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

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

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

Improve Oakland Neighborhoods: Reduce blight and nuisance.

Staff recommends approval of the resolution.

FISCAL IMPACT

Commencing January 1, 2005 the City will pay WMAC \$3.20 per household per month to provide weekly residential recycling collection and processing services within its service area. Currently WMAC receives \$2.05 per household per month to provide bi-weekly service. The additional annualized cost to provide weekly recycling service is approximately \$926,000 (Fund 1710, Organization 30282, Account 54919). The total amount to be paid to WMAC for recycling collection and processing services is approximately \$2,600,000 per year.

Beginning January 1, 2005 WMAC will implement a residential food scraps recycling program. This will require yard waste to be collected weekly instead of bi-weekly. The annualized cost to provide weekly collection of yard waste and weekly food scraps recycling is approximately \$2,031,000. Funds to pay for these services will come from fees collected by Waste Management of Alameda County on the garbage bill. The garbage bill for single-family residences (1-4 units) will increase by \$1.28 per month on July 1, 2004 and by an additional \$1.28 per month on July 1, 2005 to pay for the new services. The garbage bill for multi-family residences (5+ units) will increase by \$0.36 per unit per month on July 1, 2004 and by an additional \$0.36 per unit per month on July 1, 2005.

Funding of up to \$8.00 per eligible household to purchase a food scraps container and develop educational materials is available from the Alameda County Waste Management Authority (ACWMA). The City has previously requested that the ACWMA set aside funds in its 2004-05 budget for implementation of a residential food scraps recycling program in Oakland. The City will contract with WMAC to purchase and deliver the food scraps containers and to assist with the development of educational materials.

BACKGROUND

On November 4, 2003 the City Council heard a report from the Public Works Agency that recommended a Request For Proposals be issued to obtain a residential recycling collection and processing service provider for the area of the City currently serviced by California Waste Solutions. Staff also recommended that the City enter into negotiations with WMAC to resolve citywide recycling service equity issues by providing weekly single stream recycling in its service area. In addition, staff recommended that the City expand the yard waste program to include the recycling of food scraps and soiled paper products.

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Staff and representatives from WMAC have been diligently negotiating an amendment to the Franchise Agreement to provide for weekly single stream recycling and implementation of a food scraps recycling program, subject to City Council approval. Under the terms of the proposed Franchise Agreement amendment, WMAC will change its existing bi-weekly collection of blue and yellow 18-gallon tub-style recycling bins to a single stream 64-gallon cart for all recyclables to be collected weekly. This change should improve the recycling program as:

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

WMAC has been the recycling collection and processing service provider in the Southern part of the City since 1992. WMAC's current contract for providing bi-weekly recycling collection and processing services expires on December 31, 2010.

KEY ISSUES AND IMPACTS

Length of Contract

WMAC has proposed that the ending date of the existing Franchise Agreement be moved from December 31, 2010 to December 31, 2012. This will allow WMAC to amortize their vehicles and single stream carts over a reasonable period of time. An agreement of shorter duration would require a higher monthly rate as the equipment would have to be financed over a shorter period of time.

The existing Franchise Agreement allows the City, at its sole option, to extend the agreement for up to five years at the then existing terms and conditions. WMAC has proposed that the extension period be shortened to three years.

Implementation Period

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

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Recycling Program Changes

Recycling Rate and Annual Adjustment

The City will pay WMAC \$3.20 per month for each single-family and multi-family household that receives recycling service. The City is currently paying WMAC \$2.05 per month for each customer serviced. The increase is due to the switch to weekly recycling collection, the addition of six vehicles to the fleet, and the purchase of approximately 58,000 single stream carts that must be amortized over the length of the agreement. The City is also requiring that WMAC refurbish its existing fleet to comply with the California Air Resources Board diesel emission regulations.

The garbage bill for all multi-family residences (5+ units) will increase by \$0.36 per unit per month on July 1, 2004 and by an additional \$0.36 per unit per month on July 1, 2005 to cover the cost of weekly recycling collection. The increased cost for single-family residences will be \$0.41 per month on July 1, 2004 and an additional \$0.41 per month on July 1, 2005.

The City hired Hilton Farnkoph & Hobson (HFH) to review the information that was used by WMAC to develop the proposed rate. HFH was requested to determine the accuracy and reasonableness of the information and to compare the rate to industry standards. HFH concluded that the rate requested by WMAC does not appear to be unreasonable for the collection and processing of materials included in the agreement.

Single Stream Recycling Collection

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

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

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Small Business Recycling

WMAC will provide recycling collection and processing for small businesses that set out up to two 96-gallon carts per week. WMAC will provide a subscription based service for small businesses and the monthly rate for weekly service will be \$7.50 for a 64-gallon cart and \$10.00 for a 96-gallon cart.

Public Education and Customer Service

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

Yard Waste Program Changes

Residential Food Scraps Program

The 2000 Waste Characterization Study prepared for the ACWMA showed that 22% (single-family dwellings 17%, multi-family dwellings 5%) of the residential waste stream is comprised of food waste. This is the largest untargeted component of the residential waste stream and a program that can be economically implemented in conjunction with the City's existing yard trimmings program. Staff expects that the City will be able to divert approximately 10,000 tons of food scraps from the landfill once the program has been fully implemented. This will provide an additional two percent (2%) towards the City Council goal to reduce the amount of material going to the landfill by 75% by 2010. The City is currently at 50%. Each single family residence (1-4 units) will receive a food scraps container when the single stream recycling cart is delivered.

Staff has met with representatives from the ACWMA to discuss the proposed residential food scraps program and the availability of a one-time subsidy for implementation of the program. The City has approximately 95,000 eligible residences and has requested \$761,000 from the ACWMA for the purchase of the food scraps containers and development of public education materials. In order to qualify for the funding, Oakland must switch to weekly yard waste collection; target pre- and post-consumer residential food scraps and contaminated paper; submit public education materials for ACWMA approval; and provide pre- and post-program participation data for three years. Multi-family units (5 or more residences) do not qualify for this program.

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Weekly Yard Waste Collection

To implement the Residential Food Scraps Program, the City must switch to weekly yard waste collection. WMAC will provide weekly yard waste collection commencing on January 3, 2005. Residents do not have to wait until they receive their food scrap container to begin participating in the new program. They can put eligible materials (vegetables, fruit, grain, fish, meat, bones, kitchen grease, paper and cardboard that have been contaminated with food, paper towels, paper plates, paper coffee cups, tissues, wax paper and wax cardboard) directly into their green yard waste cart.

Under the new program, residents will be able to set out an unlimited amount of yard waste for collection each week. In addition to the 64-gallon green yard waste cart, residents can set out additional cans of yard waste or use 32-gallon paper gardening bags. Branches and unpainted/untreated wood must be bundled and not exceed four feet in length.

Wildfire Prevention Assessment District Yard Waste Collection

To assist hill residents in complying with the requirements of the Fire Department to maintain defensible space around all buildings and structures, WMAC has agreed to provide unlimited bi-weekly yard waste collection commencing May 31, 2004 through December 31, 2004 for homes located within the Wildfire Prevention Assessment District. In addition to the 64-gallon green yard waste cart, residents can set out additional cans of yard waste or use 32-gallon paper gardening bags. Branches and unpainted/untreated wood must be bundled and not exceed four feet in length.

The Public Works Agency, the Fire Prevention Bureau of the Fire Department and WMAC will collaborate on a notice to be sent to qualifying residences to notify them of this additional service. Residents within the Assessment District can also dispose of yard waste through the On-Call Bulky Pickup Program. Yard waste that is set out in disposable bags or properly bundled does not count against the three yards of solid waste that may also be set out in the Bulky Pickup Program.

Equipment

Under the terms of the agreement, WMAC is required to comply with the promulgated California Air Resources Board regulations for diesel emissions. WMAC will need to acquire six new vehicles and an additional six used vehicles to adequately service its collection routes due to the change to weekly recycling and yard waste collection. WMAC will also be purchasing approximately 58,000 single stream recycling carts.

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Yard Waste Rate Adjustment

To pay for the cost of the residential food scraps program and weekly unlimited yard waste collection, staff recommends that the garbage rate for single family residences (1-4 units) be increased by \$0.87 per month on July 1, 2004 and by an additional \$0.87 per month on July 1, 2005.

SUSTAINABLE OPPORTUNITIES

Economic: WMAC is an Oakland company. Recycling creates opportunities for local market development for recyclables processing as well as secondary materials reuse and remanufacturing.

Environmental: WMAC is required to ensure that new collection vehicles meet the California Air Resources Board regulations for diesel emissions. WMAC must also refurbish an additional 33 vehicles in its fleet to comply with these regulations.

Social Equity: Compliance with the California Air Resources Board regulations will improve air quality in the City's neighborhoods.

DISABILITY AND SENIOR CITIZEN ACCESS

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

RECOMMENDATION

Staff recommends approval of the Franchise Agreement amendment with WMAC for weekly residential recycling collection and processing services. The change to a single stream recycling container will enhance the program and improve WMAC's service to its customers. Staff also recommends implementation of the residential food scraps recycling program and the change to weekly unlimited yard waste collection.

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ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolution.

Respectfully submitted,

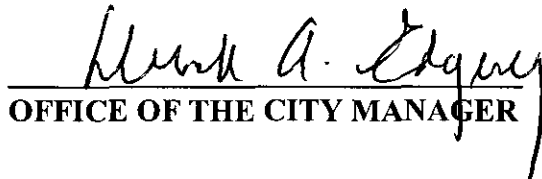


RAUL GODINEZ II, P.E.
Director, Public Works Agency

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

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

APPROVED AND FORWARDED
TO THE CITY COUNCIL:



OFFICE OF THE CITY MANAGER

Item: 15.1
City Council
May 4, 2004

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL 2004 APR 22 PM 1:08

RESOLUTION No. _____ C. M. S.

INTRODUCED BY COUNCILMEMBER _____



RESOLUTION AUTHORIZING THE FIFTH AMENDMENT TO THE FRANCHISE AGREEMENT FOR SOLID WASTE AND YARD WASTE COLLECTION AND DISPOSAL SERVICES WITH WASTE MANAGEMENT OF ALAMEDA COUNTY AND AUTHORIZING WEEKLY SINGLE STREAM RESIDENTIAL RECYCLING COLLECTION AND PROCESSING SERVICES IN THE SOUTHERN HALF OF THE CITY; WEEKLY YARD WASTE COLLECTION; AND WEEKLY RESIDENTIAL FOOD SCRAPS RECYCLING THROUGHOUT THE CITY FROM JANUARY 1, 2005 THROUGH DECEMBER 31, 2012 IN AN INITIAL AMOUNT OF APPROXIMATELY \$2,957,000 PER YEAR

WHEREAS, the City and Waste Management of Alameda County (WMAC) entered into a Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services (Franchise Agreement) dated December 1, 1995; and

WHEREAS, the City and WMAC entered into a Supplemental Agreement dated December 2, 1995 and the First Amendment to Supplemental Agreement dated July 1, 1996; and

WHEREAS, the City and WMAC entered into First Amendment to Franchise Agreement dated October 1, 1997; Second Amendment to Franchise Agreement dated March 1, 1998; Third Amendment to Franchise Agreement dated March 1, 1999; and Fourth Amendment to Franchise Agreement effective as of February 1, 1998; and

WHEREAS, the City and WMAC desire to modify the services to be performed by WMAC to include the weekly collection of recyclable materials, yard waste and residential food scraps; and

WHEREAS, the City and WMAC to memorialize their agreements and to amend the Franchise Agreement to incorporate these agreements; and

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

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

15.1

ORA/COUNCIL

MAY 4 2004

RESOLVED: That the City Manager is hereby authorized and empowered to execute the Fifth Amendment to the Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services with Waste Management of Alameda County to provide weekly single stream residential recycling collection and processing services; weekly yard waste collection; and weekly residential food scraps recycling and to approve any subsequent amendments to or extensions of said Franchise Agreement with the exception of those related to an increase in compensation for work not included in said Franchise Agreement or for increases in compensation beyond the procedures the City has set forth in the Franchise Agreement, provided that such agreements and amendments or extensions shall be approved by the City Attorney's Office and shall be filed with the City Clerk's Office; and be it

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

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

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

FIFTH AMENDMENT TO FRANCHISE AGREEMENT

THIS Fifth Amendment, by and between the CITY OF OAKLAND, a municipal corporation, hereinafter referred to as "City", and WASTE MANAGEMENT OF ALAMEDA COUNTY, INC., a California corporation, hereinafter referred to as "Contractor", is effective as of January 1, 2005.

RECITALS

WHEREAS, the City and Contractor entered into a Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services (Franchise Agreement) dated December 1, 1995; and

WHEREAS, the City and Contractor entered into a Supplemental Agreement dated December 2, 1995, and the First Amendment to Supplemental Agreement dated July 1, 1996; and

WHEREAS, the City and Contractor entered into First Amendment to Franchise Agreement dated October 1, 1997; Second Amendment to Franchise Agreement dated March 1, 1998; Third Amendment to Franchise Agreement dated March 1, 1999; and Fourth Amendment to Franchise Agreement effective as of February 1, 1998; and

WHEREAS, the City and Contractor desire to modify the services to be performed by Contractor to include the weekly collection of Targeted Recyclable Materials, Yard Waste and Residential Food Scraps; and

WHEREAS, the City and Contractor desire to memorialize their agreements and to amend the Franchise Agreement to incorporate these agreements;

NOW, THEREFORE, THE CITY AND CONTRACTOR DO HEREBY AGREE TO AMEND THE FRANCHISE AGREEMENT AS FOLLOWS:

I. Article 1.00 is amended to add or modify the following definitions:

Contract Manager

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

Multi-Family Collection Service

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

Non-Recyclable Contaminant

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

Non-Targeted Recyclable Materials

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

Processing Residue

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

Residential Food Scraps

“Residential Food Scraps” shall mean vegetable, fruit, grain, fish and other food scraps including meat, bones, dairy products, cooking fats, oil and grease; paper and cardboard that have been contaminated with food, cooking fats, oil or kitchen grease; compostable paper associated with food preparation or food consumption such as paper towels, paper plates, paper coffee cups, tissue, waxed paper and waxed cardboard; and other materials designated by the City and Contractor that are capable of being composted, that would otherwise be disposed as Solid Waste, and that are set out separate from Solid Waste for collection as Yard Waste and then returned to the economic mainstream in the form of commodities such as, but not limited to, compost, soil amendments, mulch, animal feed and fertilizer.

Small Business

“Small Business” means a business located within the Service Area of Contractor and (a) uses cart service for Solid Waste or (b) shares bin service for Solid Waste with other Small Businesses or (c) generates an amount of Recyclables up to 2-96 gallon containers per week or up to 1-96 gallon container and one (1) yard of corrugated cardboard. Unless otherwise requested by the owner(s) of an in-home office(s), an in-home office shall be eligible to participate in the Program but without any special considerations or privileges other than those provided to the dwelling unit.

Yard Waste

“Yard Waste” means prunings, brush, leaves, grass clippings, Residential Food Scraps and such other similar types of organic waste that may be mutually agreed upon by the City and Contractor. Untreated and unpainted wood which fits within the Yard Waste container is also Yard Waste.

II. Section 3.2 is amended as follows:

“Term. The term of this Agreement shall begin on December 1, 1995 and shall end at midnight on December 31, 2012.”

III. Section 3.3 is amended as follows:

“Option to Extend Term. The City may extend the Term at its sole discretion for up to three (3) years under the then existing terms and conditions. The City shall...up to a maximum of twelve (12) months.”

IV. Section 3.4.1.5 is amended as follows:

“Implementation Plan. Contractor shall submit, no later than August 1, 2004, subject to review and approval by the City, a detailed implementation plan to switch to weekly Recycling and Yard Waste collection and to add a Residential Food Scraps program, that addresses all foreseeable start-up issues, which shall be included as Exhibit M. Contractor shall also include with the submission any Solid Waste and Yard Waste collection route changes contemplated during the implementation period of this Agreement. Contractor acknowledges that the City is obligated to share this information with the holders of its Recycling Agreements. Contractor shall not commence the delivery of Single Stream containers prior to January 17, 2005. The City’s approval of the implementation plan shall not be unreasonably withheld.”

V. Section 4.3 is amended as follows:

“Yard Waste Collection. Contractor shall be responsible for ensuring that Yard Waste collected pursuant to this Section shall be kept separate from Solid Waste after collection. Contractor agrees that collected Yard Waste will be recycled through composting, mulching or applying directly to land. Yard Waste must be composted at a facility permitted to handle food waste, and the product cannot be used as alternative daily cover. Contractor shall notify the City, and receive the City’s consent, before using Yard Waste for transformation, biomass fuel production or any other use that might result in the City receiving less than full credit for such Yard Waste toward compliance with AB 939 waste diversion goals. Contractor shall not dispose as Solid Waste, any separately collected Yard Waste without prior written approval of the City. Without limiting Contractor’s obligations under this Agreement, the Yard Waste collection services shall be performed by Contractor in accordance with the Performance Standards set forth in Exhibit A.

V. Section 4.3.1 is amended as follows:

“Curbside Service. Contractor shall provide for the weekly curbside collection, transportation and processing of an unlimited amount of Yard Waste generated from Single Family Dwellings. Contractor shall provide each Single Family Dwelling with a container having a capacity of up to 64 gallons. Residents of Single Family Dwellings may set out additional Yard Waste each week in recyclable 32-gallon paper gardening bags. Branches and unpainted/untreated wood must be bundled and not exceed four (4) feet in length. Contractor may limit the amount of Yard Waste to be collected from a

Single Family Dwelling to 64 gallons per week if it is able to show to the satisfaction of the City that the Customer is disposing of Yard Waste generated from another location.”

VI. Section 4.3.8 is amended as follows:

“Public Education Materials. If requested by the City, Contractor shall prepare public education materials to publicize changes to the Yard Waste Program, including the introduction of Residential Food Scraps recycling. The budget for said public education materials shall be set by the City in consultation with Contractor. The City shall reimburse Contractor for Residential Food Scraps recycling public education materials in an amount to be agreed upon by the parties. All materials are subject to review and approval of the City in accordance with the guidelines set forth in Exhibit G and are in addition to other public education requirements of Contractor set forth in this Section. Contractor shall spend...”

VII. Sections 4.3.9 through 4.3.9.2 are added to the Franchise Agreement as follows:

“4.3.9 Residential Food Scraps Containers. Contractor shall provide and distribute to each living unit in a Single Family Dwelling a container of approximately 2.5 gallons with a lid and handle to be used to temporarily store Residential Food Scraps prior to placing such material in the Yard Waste collection container. The City shall approve the manufacturer’s specifications for the container prior to purchase and distribution to the Single Family Dwellings. Contractor shall affix a decal on the container that lists the allowable Residential Food Scraps materials. The decals must be available in English, Spanish, Chinese and Vietnamese and any additional language requested by the City for it to comply with its equal access ordinance requirements. The City shall pay the cost for the initial container delivered to each living unit in a Single Family Dwelling. After the initial distribution of containers, Contractor shall be solely responsible for the purchase and distribution of Residential Food Scraps containers when new Single Family Dwelling accounts are established.

4.3.9.1 Replacement Containers. In the event the Residential Food Scraps container is lost, stolen, damaged or destroyed, Contractor shall be responsible for providing a replacement container within one week of the request by the Single Family Dwelling or the City. Contractor shall be solely responsible for the purchase and distribution of replacement containers. During the remaining Service Term of this Agreement, and any Extended Term, Contractor shall be responsible for providing annual replacement containers totaling five percent (5%) of the number of Single Family Dwellings serviced. The quantity of replacement containers owed to the City shall be cumulative from year to year. Upon expiration of the Agreement, the City relinquishes any claim it may have for reimbursement from Contractor for any unused replacement containers. Contractor shall notify the City if a Customer has required replacement of a container more than twice in a twelve (12) consecutive month period. The City and Contractor shall consult with each other (and the Customer if deemed appropriate) to develop an appropriate response to the situation.

4.3.9.2 Residential Food Scraps Public Education Materials. The Residential Food Scraps container shall come with an instruction sheet, emphasizing use of the Residential Food Scraps program and program details. Residential Food Scraps processing and its environmental benefit shall be explained in sufficient detail and its collection shall be cited as being an essential component of the City reaching its AB 939 and Measure D diversion goals.”

VIII. Section 4.10 is added to the Franchise Agreement as follows:

“4.10 Vehicles Used by Contractor. All vehicles used by Contractor to perform the services set forth in this Article shall comply with all requirements, rules and regulations established and/or amended by the California Air Resources Board during the Term of this Agreement. The City and Contractor agree that the Rates are sufficient for Contractor to upgrade and retrofit its vehicles to be in compliance with said California Air Resources Board requirements, rules and regulations and that the City shall not be required to increase the Rates for this purpose.”

IX. Section 6.5 is added to the Franchise Agreement as follows:

“6.5 City Redirection of Yard Waste. The City reserves the right to redirect Yard Waste collected under this Agreement to a processing site within Alameda County. The City and Contractor shall meet and discuss the impact the change will have on the transportation and tipping costs of Contractor, including existing contracts Contractor may have with a third party to provide Yard Waste for processing. The City shall provide Contractor six (6) months written notice identifying the new processing site and the date Contractor shall commence use of such site. The Contractor shall ensure that the new processing site receives Yard Waste collected under this Agreement by the date designated by the City. The City and Contractor may mutually agree to waive the six (6) months notification requirement and to agree to an earlier date for the redirection of Yard Waste. In the event the City directs Contractor to use a particular processing site and Contractor incurs lower transportation and tipping costs, inclusive of all Contractor handling and processing costs, Contractor shall share with City 50% of said savings. Contractor has provided the City with its per ton cost for transporting and tipping Yard Waste as of January 1, 2005 as set forth in Exhibit C.

X. Section 17.1 is amended as follows:

“Subcontracting. Contractor shall not engage...essential services to the City.

In the recruitment of subcontractors, the City requires all Contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland’s business community. The City Manager will track the City’s MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. In the use of such recruitment, hiring

and retention of employees or subcontractors, the City requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community."

XI. Section 17.2.1 is amended as follows:

"Equal Employment Practices. Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the term of this Agreement, Contractor agrees as follows:

- a. Contractor and any permitted subcontractors shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. Contractor and Contractor's subcontractors shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, marital status, religion, gender, sexual preference, race, creed, color, national origin, AIDS, ARC, or disability. Such action shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post, in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
- b. Contractor and any permitted subcontractors shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants shall receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- c. If applicable, Contractor shall send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Exhibit X ("Declaration of Compliance

with the Americans with Disabilities Act”) attached hereto and incorporated herein.”

XII. Section 17.3 is deleted in its entirety.

XIII. Section 17.4 is deleted in its entirety.

XIV. Section 17.5 is amended as follows:

“Compliance with the City’s LBE and SLBE Programs. Contractors utilizing subcontractors shall comply with the Local and Small Local Business Enterprise Program (LBE/SLBE) goals attached and incorporated herein as Exhibit P. Additionally, opportunities for training and employment shall be given to residents of Oakland.”

XV. Section 17.7 is deleted in its entirety.

XVI. Section 17.9 is amended as follows:

“Political Prohibition/Campaign Contributions. Monies paid by the City pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate’s meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government. This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations. The Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations. Contractor must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as Exhibit AA.”

XVII. Section 17.11 is amended as follows:

“Conflict of Interest/Agents/Brokers. The following protections against conflict of interest will be upheld:

- a. Contractor certifies that no member of, or delegate to, the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- b. Contractor certifies that no member of, or delegate to, the State of California legislature or the California Integrated Waste Management Board shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.

- c. Contractor certifies that no member, officer, or employee of the City or its designees or agents and no other public official of the City who, in his/her official capacity, exercises any functions or responsibilities with respect to the services to be provided by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- d. Contractor warrants and represents, to the best of its knowledge, that no public official or employee of the City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.
- e. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matter already made by Contractor to the City, that (1) no public official of the City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$1,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$1,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$250 the previous year. Contractor agrees to promptly disclose to the City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).
- f. Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further

understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.

- g. Contractor warrants that Contractor has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Contractor working solely for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.
- h. Contractor shall incorporate, or cause to be incorporated, in all subcontracts for work to be performed under this Agreement a provision prohibiting such interests pursuant to the purposes of this Section.
- i. Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation.

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Contractor understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Contractor is responsible for the conflict of interest situation.”

XVIII. Section 17.12 is deleted in its entirety.

XIX. Section 17.31 is added to the Franchise Agreement as follows:

“Wages. 17.31.1 Living Wage Requirements. This Agreement is subject to the Living Wage Ordinance of Chapter 2.28 of the Oakland Municipal Code and its implementing regulations. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein as Exhibit Y and made part of this Agreement, and unless specific exemptions apply or a waiver is granted, that Contractor provide the following to its employees who perform services under or related to this Agreement. All of the provisions of Section 17.31.1, or any part

hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

17.31.1.1 Minimum Compensation. Said employees shall be paid an initial hourly wage rate of \$9.66 with health benefits or \$11.11 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.

17.31.1.2 Health Benefits. Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.25 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.

17.31.1.3 Compensated Days Off. Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

17.31.1.4 Federal Earned Income Credit (EIC). Contractor shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.

17.31.1.5 Notice to Employees. Contractor shall provide to all employees and to the City's Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.

17.31.1.6 Reporting. Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the City's Office of Contract Compliance, on a quarterly basis (using calendar quarters), due on or before the 20th day of each subsequent quarter for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

17.31.1.7 Subcontractor Obligations. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the City's Office of Contract Compliance."

XX. Section 17.32 is added to the Franchise Agreement as follows:

"Affirmative Action Efforts. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or subcontractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question."

XXI. Section 17.33 is added to the Franchise Agreement as follows:

Validity of Contracts. The Oakland City Council must approve all agreements greater than \$15,000. This Agreement shall not be binding or of any force or effect until signed by the City Manager or his or her designee and approved as to form and legality by the City Attorney or his or her designee."

XXII. Section 17.34 is added to the Franchise Agreement as follows:

"Equal Benefits Ordinance. This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the City; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of

twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the City or (2) of real property owned by others for the City's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of Contractor's operations that occur (1) within the City; (2) on real property outside Oakland if the property is owned by the City or if the City has a right to occupy the property, and if Contractor's presence at that location is connected to a contract with the City; and (3) elsewhere in the United States where work related to a City contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor. The equal Benefits Ordinance requires among other things, submission of Exhibit Z, the Equal Benefits-Declaration of Nondiscrimination, incorporated herein."

XXIII. Section 17.35 is added to the Franchise Agreement as follows:

Nuclear Free Zone Disclosure. Contractor represents, pursuant to Exhibit BB ("Nuclear Free Zone Disclosure Form"), that Contractor is in compliance with the City's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Contractor shall complete Exhibit BB, attached hereto."

XXIV. Section 18.1.02.a is amended as follows:

"Frequency of Collection. Contractor shall provide weekly collection..."

XXV. Section 18.1.02.b is amended as follows:

"Material Preparation Requirements.

- (a) Single Family Dwellings, Multi-Family Dwellings and City Facilities will be required to place commingled Targeted Recyclable Materials in a recycling container provided by Contractor.
- (b) Corrugated cardboard is required to be flattened and no larger than 3' by 3' and be (1) placed in the recycling container provided by Contractor or (2) stacked or bundled next to the recycling container. Contractor is obligated to collect all corrugated cardboard meeting the dimensional requirements that is set out for collection.
- (c) Used motor oil is required to be placed in a Contractor-provided container and placed next to the recycling container. Up to five gallons of used motor oil may be set out for collection. Contractor may decline collection of oil in incorrect containers or the amount exceeding five gallons. Contractor shall decline collection of contaminated used motor oil or any other fluids that have been set out for collection.

- (d) Used motor oil filters are required to be placed in a Contractor-provided container and placed next to the recycling container. Contractor may decline collection of oil filters in incorrect containers.

In the event that Federal...”

XXVI. Section 18.1.02.d is amended as follows:

“Backyard Service. Contractor shall provide backyard Recycling collection service for (i) frail senior citizens and disabled individuals at no additional charge, in accordance with the requirements set forth in Exhibit S; (ii) Single Family Dwellings meeting the criteria for a curbside placement exemption as set forth in Section III of the Supplemental Agreement dated December 2, 1995 between the City and Contractor; and (iii) other customers paying an additional charge for backyard service. Contractor shall be responsible for determining who receives backyard service, subject to guidelines approved by the City.”

XXVII. Section 18.1.05 is amended as follows:

“Special Events Recycling. Contractor shall offer to provide 96-gallon carts for one-time collection of Source Separated Targeted Recyclables (except used motor oil and used motor oil filters) from one-day, two-day or three-day special events throughout the City. Contractor will deliver recycling carts...as described in Section 18.1.04.”

XXVIII. Section 18.2.02 is amended as follows:

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

XXIX. Section 18.2.03 is amended as follows:

1. Small Businesses will be required to place commingled Targeted Recyclable Materials in a recycling container(s) provided by Contractor.

2. Corrugated cardboard is required to be flattened and no larger than 3' by 3' and be (1) placed in the recycling container provided by Contractor or (2) stacked or bundled next to the recycling container.
3. There shall be no minimum level of recyclables before a Small Business may participate in the Program.
4. All recycling containers used by Small Businesses to participate in this Program must be placed at the curb for collection. Contractor must provide collection service to subscribing Small Businesses as described in this Section and defined in Article 1.00, and must service every Small Business in the Service Area that wishes to subscribe. Two or more Small Businesses may share recycling container(s) service.
5. Contractor may decline collection of Targeted Recyclable Materials containing excess Contaminants and Hazardous Waste, or not prepared in accordance with the Program requirements. If Contractor declines collection, Contractor shall affix a note to or place a note within the recycling container explaining why the materials were refused. The note must be acceptable to the City.
6. Contractor shall collect all Targeted Recyclable Materials in or adjacent to recycling containers when material has been scattered within five feet of said containers due to scavenging or adverse weather conditions.
7. In the event of chronic incorrect setouts, Contractor may, after consultation with the City, end service to a Small Business with prior notice. If the Small Business pre-paid for Program services, Contractor must issue a pro-rated refund for the remaining amount of service.”

XXX. Section 18.2.04 is amended as follows:

“Small Business Recycling Rates. The rates in this section...Small Business rates.

The Small Business, property owner, or their agent, shall pay all costs of the plastic bag service (including but not limited to bag purchase, delivery and collection). All costs shall be included in the bag subscription rate for Small Businesses. Small Businesses using bag subscription shall pay the rate(s) set forth in Exhibit CC; the City is not responsible for payment. Bag subscribers may continue to set out any remaining bags after the subscription period has expired. A Contractor customer service representative shall contact non-renewing bag subscribers to determine if they want to continue in the program and/or if they have any bags remaining.

Small Businesses receiving 18 gallon recycling bin or 64 or 96-gallon cart service shall pay the rate(s) set forth in Exhibit CC; the City is not responsible for such payment. The per month rate(s) includes the collection service, delivery and rental of the recycling container used for the service described in Section 18.2.03.”

XXXI. Section 18.3.01 is amended as follows:

“Single Family Dwelling Recycling Containers. Contractor shall be solely responsible for purchase and distribution of a 64 gallon recycling container for all Single Family Dwellings. Style, color, size, manufacturer, and copy to be printed or embossed on the containers shall be subject to approval by the City.

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

XXXII. Section 18.3.02 is amended as follows:

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

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

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

XXXIII. Section 18.3.03 is amended as follows:

“Replacement of Recycling Containers. In the event recycling containers are lost, stolen, damaged or destroyed, Contractor shall be responsible to provide replacement containers within one week of request by customer or City. Contractor shall be solely responsible for the purchase and distribution of replacement containers. During 2005 and 2006 Contractor shall be responsible for providing annual replacement containers totaling five percent (5%) of the number of Single Family Dwellings serviced. During 2007 and through the end of the Service Term, Contractor shall be responsible for providing annual replacement containers totaling two percent (2%) of the number of Single Family Dwellings serviced. Should the City elect to extend the Agreement pursuant to Section

3.3, Contractor shall be responsible for providing additional replacement containers totaling two percent (2%) of the number of Single Family Dwellings serviced. If the City elects to extend the Agreement for less than twelve months, said amount of replacement containers shall be pro-rated. The quantity of replacement containers owed to the City shall be cumulative from year to year. Upon expiration of the Agreement, all remaining containers owed to the City shall be provided within 30 calendar days, unless the City and Contractor mutually agree upon a reasonable form of compensation to the City for said containers. If during any year the Customers require more replacement containers than the number required to be provided by Contractor, Contractor shall supply and deliver containers at Contractor's actual cost, which may include reasonable transportation and administration expenses, not to exceed \$50.00 per container inclusive of all costs, and the City shall reimburse Contractor for said additional cost within thirty (30) days of receipt of a correct invoice.

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

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

Contractor shall be required to provide all necessary replacement recycling containers for Multi-Family Dwellings, except that upon prior notice to and approval from the City, Contractor may cease service at a Multi-Family Dwelling if containers provided to the Multi-Family Dwelling are chronically damaged or destroyed. Contractor shall cease billing the City for said units in the month following the discontinuance of service.

Contractor shall be required to provide all necessary replacement recycling containers for City Facilities.

Contractor shall be responsible for providing replacement containers within one week of the request by the Small Business or the City. Contractor shall be solely responsible for the purchase and distribution of replacement containers. During the Service Term and extended term of this Agreement, Contractor shall be responsible for providing one replacement container per calendar year per Small Business for the subscribed level of service. Should the City elect to extend the Agreement for up to twelve months pursuant to Section 3.3, said amount of replacement containers shall be pro-rated in monthly increments based upon the total number of Small Business accounts receiving service at the end of the Service Term. Should a participating Small Business require the replacement of more than one lost, stolen, damaged or destroyed containers in a calendar year, Contractor may charge the Small Business for additional replacement containers at Contractor's actual cost, which may include reasonable transportation and administration expenses."

XXXIV. Section 18.7.01 is amended as follows:

“Public Education Budget. The Contractor shall be required to allocate or spend \$30,000 each calendar year, beginning in 1999, on Program-related public education activities, which have received prior written approval from the City. In each subsequent year this amount shall be increased by the same percentage, if any, that rates are increased pursuant to Section 15.3. The City and the Contractor may mutually agree to perform joint public education activities using all or some of the annual public education budget. Any unspent funds at year-end shall be deducted from the Contractor’s monthly payment pursuant to Section 18.9 (h). Upon request by the Contractor, the City may, at its option, authorize the Contractor to carryforward up to \$15,000 of unspent funds to the following calendar year.

Upon request of the City, Contractor may provide additional public education services pursuant to the provisions of Section 14.2 and Exhibit G. The City shall reimburse Contractor for the cost of providing additional services in an amount to be agreed upon prior to the commencement of such services.”

XXXV. Section 18.7.02 is amended as follows:

“Public Education Activity Requirements.

(f) All Public Education materials must include four languages...”

XXXVI. Section 18.8.01 is amended as follows:

“Monthly Program Status Report. Contractor shall submit Monthly Program Status Reports for the duration of the Agreement commencing the first month of collection. These reports shall be due on or before the 20th day of each subsequent month. The Monthly Program Status Reports shall include but not be limited to the following:

- a. Detail report of tonnages of all materials collected, except for used motor oil, which shall be measured by volume, for all materials collected through the Program , that shall include the following data fields for each individual load collected:
 1. Date.
 2. Facility.
 3. Route number.
 4. Single-family or multi-family.
 5. Weight document number (unique, non-repeating number).
 6. Net weight;

- b. Summary report of tonnages of all materials, from all suppliers, programs and jurisdictions, shipped from Contractor’s processing facility. Report shall include the following data fields:

1. Total net weight, in tons, of all fiber shipped for recycling from Contractor's processing facility
 2. Total net weight, in tons, of all containers shipped for recycling from Contractor's processing facility
 3. Total net weight, in tons, of all Processing Residue shipped for disposal from Contractor's processing facility
- c. Detail report of new Multi-Family Dwelling accounts shall include the following data fields:
1. Address.
 2. Name and phone number of contact person.
 3. Number of units.
 4. Service day.
 5. Route number.
 6. Date of delivery of containers and public education material.
 7. Number of containers by type.
- d. Detail report of Small Business accounts that shall include the following data fields:
1. Name of business.
 2. Address.
 3. Name and phone number of contact person.
 4. Start service date.
 5. Route number.
 6. Account Active or Inactive?
- e. Detail report of replacement recycling containers and requests for replacement containers that shall include the following data fields:
1. Addresses of eligible Customers who request replacement container(s).
 2. The date of request for replacement.
 3. The date of replacement for each request.
 4. A summary report of 1 through 3;
- f. Detail report of missed collection that shall include the following data fields:
1. Addresses of eligible Customers who reported missed collection.
 2. Date of report.
 3. Date of recovery of missed collection.
 4. Number of collection days from date of report to date of recovery.
 5. Number of collection days from scheduled service to recovery.
 6. Route number.

XXXVII. Section 18.8.02 is amended as follows:

“Quarterly Program Status Report. Contractor shall submit Quarterly Program Status Reports (using calendar quarters) due on or before the 20th day of each subsequent quarter. The Quarterly Program Status Reports shall include but not be limited to the following:

- a. Summary of tonnages recovered by route, except for used motor oil, which shall be measured by volume, for both Single Family and Multi-Family Dwellings;
- b. Summary of container replacement information;
- c. Summary of missed or refused collection information;
- d. Discussion of problems encountered and noteworthy experiences in Program operation, including recommendations for Program modification;
- e. Discussion of public awareness campaign efforts and impacts of said efforts and public education budget expenditures including copies of all invoices; and
- f. List of vehicles in service including the following information for each vehicle:
 1. Contractor truck number
 2. DMV license plate number
 3. Body:
 - Vehicle Identification Number
 - Make
 - Model Year
 4. Chassis:
 - Vehicle Identification Number
 - Make
 - Model Year
- g. Detail report of all Multi-Family Dwelling accounts shall include the following data fields:
 1. Address.
 2. Name and phone number of contact person.
 3. Number of units.
 4. Service day.
 5. Route number.
 6. Number of containers by type.

XXXVIII. Section 18.8.03 is amended as follows:

“Annual Program Status Report. Contractor shall submit Annual Program Status Reports due on or before the 20th day of each subsequent calendar year being reported. The Annual Program Status Report shall include but not be limited to the following:

- a. A discussion of public awareness campaign activities and their impact on participation and recovered volumes;
- b. A summary of public education expenditures;

- c. A summary of the quantity of recycling containers and Residential Food Scraps Container delivered and remaining in stock;
- d. Recommendations for modifications and/or improvements to the Program.”

XXXIX. Section 18.9 is amended as follows:

“Payment To Contractor.

- (a) Contractor’s monthly Single Family Dwelling price times the number of occupied Single Family Dwellings within the service area. The City shall not pay Contractor for more than 67,XXX dwellings during the Term or any extended Term of this Agreement.
- (b) Contractor’s monthly Multi-family Dwelling price times the number of units actually receiving service during the preceding month. Receipt of collection service shall be demonstrated by the placement and service of recycling containers for Targeted Recyclable Materials in designated areas within the proper confines of the building and consistent with the agreement of building ownership or management. The City shall not pay Contractor for more than 17,XXX units during the Term or any extended Term of this Agreement.
- (c) The value of any...
- (h) Deduction for unspent public education funds pursuant to Section 18.7.01.
- (i) Deduction for premium backyard service equal to 1/3rd of the fee collected by Contractor for said service for each Single Family Dwelling receiving recycling collection outside of Contractor’s Service Area.
- (j) Deduction equal to Contractor’s monthly Household Rate for recycling times the number of newly constructed and occupied Single Family Dwellings and Multi-Family Dwelling units initiating Solid Waste collection service outside of Contractor’s Service Area. Evidence that is acceptable to the City is (i) a Temporary Certificate of Occupancy as issued by the City’s Community and Economic Development Agency or (ii) confirmation of the commencement of Solid Waste collection service at a location that has previously not received Solid Waste collection service within three years of the request for new service or has received Solid Waste collection service for fewer than the currently requested number of units. The deduction in Contractor’s payment for units subject to this provision shall commence in the month following initiation of Solid Waste collection service. The number of units added shall be cumulative through the end of the Service Term or any Extended Term.”

XL. Section 18.9.03 is amended as follows:

“Other Adjustments to Contractor’s Payment. The City may adjust the payment made to Contractor for the events described in this Section.

18.9.03.1 Termination of Used Motor Oil Collection. If Contractor’s scope of service is modified by the action of changes in Federal and/or State laws and regulations with respect to the termination of used motor oil collection, Contractor’s per

household payment will be adjusted equal to the amount of the incremental cost of providing said service proposed by Contractor (\$0.04 per dwelling per month), as adjusted for inflation in accordance with Section 18.9.02.

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

The City may conduct collection service audits twice per calendar year. In the event the City determines through service audits that greater than 5% of billed Multi-Family Dwelling units audited are not being provided with Multi-Family Collection Service, liquidated damages may be assessed as set forth in Section 16.2.4.

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

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

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

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

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

18.9.03.5 Removing Multi-Family Dwellings. In the event it is determined through collection service audits or other means that Contractor is not providing Multi-Family Collection Service to a Multi-Family Dwelling, then upon notice from the City, Contractor shall remove the Multi-Family Dwelling from its multi-family billing/service list for the next monthly billing period. The Multi-Family Dwelling can only be reinstated to active billing/service status after Multi-Family Collection Service has been re-established, per the requirements of Section 18.9.03.5.”

XLI. Exhibit A-1 is amended as follows:

“5. Multi-Family Collection Service. (a) An audit of multi-family accounts shows that more than 5% of multi-family accounts sampled are not being provided with Multi-Family Collection Service **One percent (1%) of the total monthly payment for Multi-Family Dwellings for each percentage point above 5% based upon most recent monthly invoice prior to the date of assessment.”**

IN WITNESS WHEREOF, the City and Contractor have duly authorized execution of this Fifth Amendment to Franchise Agreement on the date first written above.

City of Oakland,
a municipal corporation

Contractor

(City Manager’s Office) (Date)

(Signature) (Date)

Public Works Agency (Date)

Business Tax Certificate No.

Approved as to form and legality:

Resolution Number

(City Attorney’s Office) (Date)

Accounting Number

LIST OF EXHIBITS

- W. Non-Targeted Recyclable Materials
- X. Declaration of Compliance with the Americans with Disabilities Act
- Y. Living Wage Ordinance Declaration of Compliance
- Z. Equal Benefits Declaration of Nondiscrimination
- AA. Acknowledgement of Campaign Contribution Limits Form
- BB. Nuclear Free Zone Disclosure Form
- CC. Small Business Subscription Rates