

FRANCHISE AGREEMENT

FOR WASTE HAULING SERVICES BETWEEN

THE CITY OF IRWINDALE

AND

ARAKELIAN ENTERPRISES, INC., DBA ATHENS SERVICES

April 13, 2011

EXCLUSIVE FRANCHISE AGREEMENT
FOR WASTE HAULING SERVICES

THIS EXCLUSIVE FRANCHISE AGREEMENT FOR WASTE HAULING SERVICES (“Agreement”) is made and entered into this 13th day of April, 2011 by and between ARAKELIAN ENTERPRISES, INC., DBA ATHENS SERVICES (“Franchisee”) and THE CITY OF IRWINDALE, a municipal corporation of the State of California (“City”). City and Franchisee are occasionally herein referred to each as a “Party” and collectively as the “Parties”.

RECITALS

A. The City is responsible for providing solid waste handling services to its citizens, including source reduction, processing, recycling, composting activities and the collection, transfer and disposal of solid waste within the City boundaries subject to solid waste handling jurisdiction, as provided in Public Resources Code, Section 40057, commonly known as the California Integrated Waste Management Act of 1989 (“Act” or “AB 939”).

B. The State of California ("State") has found and declared that the amount of solid waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from land filling, have created an urgent need for State and local agencies to enact and implement an aggressive new integrated waste management program. Through enactment of the Act the State has directed the responsible state agency, and all local agencies, to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of by land disposal; and the City is required to divert from landfill disposal at least fifty percent (50%) of the municipal solid waste generated within the City; and may be subject to additional requirements during the Term of this Agreement.

C. Pursuant to California Public Resources Code Section 40059(a)(1), the City Council of the City has determined that the public health, safety, and welfare require that an exclusive franchise be awarded to a qualified solid waste enterprise, as defined and provided in Public Resources Code, Section 40058, to improve residential, governmental/institutional, and commercial collection operations, provide for the health and safety of the public, increase diversion of waste from landfills, and better meet the diversion requirements as set forth in the Act.

D. On or about April 14, 2003, City and Franchisee entered into separate non-exclusive Solid Waste Collection, Processing and Disposal Services Agreement (the “2003 Franchise Agreement”) for the provision by Franchisee to City of certain services for, among other things, the collection, transportation, disposal and recycling of residential, governmental/institutional and commercial waste, which services were specifically set forth in the 2003 Franchise Agreement.

E. Concurrent with the 2003 Franchise Agreement, the City further entered into separate non-exclusive franchise agreements (“Other Operator Franchise Agreements”), similar in form to the 2003 Franchise Agreement, with 2 additional solid waste enterprises, Waste

Management, American Reclamation for the provision of collection, transportation, disposal and recycling of commercial waste.

F. The 2003 Franchise Agreement and Other Operator Franchise Agreements expired on February 28, 2010, and have been extended on a month-to-month basis.

G. The City finds and acknowledges that, to date, Franchisee has fully performed all its obligations and duties under the 2003 Franchise Agreement in a satisfactory, professional and workmanlike manner, and Franchisee has at all relevant times provided superior solid waste management hauling services to the City and its residents. As such, the parties wish to consolidate all waste handling services so that Franchisee performs same on an exclusive basis in the City pursuant to the terms of this Agreement to support and further promote the services provided by Contractor in the proposed materials recovery facility and transfer station ("MRF/TS") anticipated by the parties to be developed in the City and wish to have this Agreement run concurrently with the term of the MRF/TS operations in the manner set forth herein.

NOW THEREFORE, in consideration of the promises and covenants contained herein, the above recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I *DEFINITIONS; DELEGATION OF AUTHORITY.*

1.1 **General.** Whenever any term used in this Agreement has been defined by the provisions of Chapter 8.20 of the Irwindale Municipal Code, as may be amended, or by Division 30, Part I of the California Public Resources Code, the definitions in the Irwindale Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

1.2 **Definitions.** Except as provided in Section 1.1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following respective meanings:

1.2.1 **AB 939.** "AB 939" means the California Integrated Waste Management Act of 1989, Public Resources Code Section 40000 *et seq.* and regulations promulgated thereunder, as amended from time, to time.

1.2.2 **AB 939 Fee.** "AB 939 Fee" means the fee or assessment set by the City which is intended to offset the City's expenses in administering this Agreement and to compensate city for the costs associated with compliance with AB 939.

1.2.3 **Agency.** "Agency" shall refer to the Irwindale Community Redevelopment Agency.

1.2.4 Agreed Upon Procedure. "Agreed Upon Procedure" shall mean the procedures and methodology approved by the City's Finance Department for review and audit of Franchisee's financial records in connection with this Agreement.

1.2.5 Agreement or Haul Agreement. "Agreement" or "Haul Agreement" means this Amended and Restated Agreement for Provision of Waste Hauling Services.

1.2.6 Bin. "Bin" means any Solid Waste container of a capacity exceeding 100 gallons (i.e., a "dumpster") and provided to customers by Franchisee. Franchisee shall offer 2, 3, and 4 yard bins and 10 through 40 yard roll off containers.

1.2.7 Bulky Waste. "Bulky Waste" means any large or small household appliance, furniture, carpet, mattress or similar large item discarded as Municipal Solid Waste from a Single-Family Residential Unit or Multi-Family Residential Unit.

1.2.8 Cart. "Cart" means any molded container provided by Franchisee of a size not to exceed 95 gallons with two or more wheels for easy carting by an individual.

1.2.9 City. "City" means the City of Irwindale, a municipal corporation organized under the laws of the State of California, and all of the territory lying within the municipal boundaries of the City as presently existing and, subject to the provisions of Section 3.1.3, all geographic areas which may be added or annexed thereto during the term of this Agreement.

1.2.10 City Facility. "City Facility" means any building, park or other site owned, or leased by the City.

1.2.11 City Manager. "City Manager" means the Manager of the City or his or her designee(s).

1.2.12 Commercial Units. "Commercial Units" shall mean the Premises (and not legal parcels) of a business that is not a City Facility, Single-Family Residential Unit or Multi-Family Residential Unit. The primary source of determining Commercial Units within the City shall be customer lists of Commercial Units to which the City or Franchisee have access and business licenses issued by the City. Neither party shall make any reference to parcel maps in identifying Commercial Units in the City. Commercial Units include industrial customers.

1.2.13 Construction and Demolition Debris or C&D Material. "Construction and Demolition Material" or "C&D Material," means any combination of inert building materials and Solid Waste resulting from construction, Remodeling, repair, cleanup, or demolition operations as defined in California Code of Regulations, Title 22 Section 66261.3 *et seq.* This term includes, but is not limited to, asphalt, concrete, cement, brick, lumber, gypsum wallboard, cardboard, and other associated packaging, roofing material, ceramic tile, carpeting; plastic pipe and steel. The material may be commingled with rock, soil, tree stumps; and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.

1.2.14 Contract Year. "Contract Year" means each annual period starting from the Effective Date and recurring thereafter from the Effective Date's anniversary.

1.2.15 County. "County" means the County of Los Angeles.

1.2.16 Day. "Day" means calendar day, unless otherwise stated in this Agreement.

1.2.17 Disposal Fee. "Disposal Fee" means those costs imposed at a Disposal Site for the handling or dumping of Solid Waste collected by Franchisee plus the marginal additional cost of transportation, in such amount as may be demonstrated by Franchisee to the satisfaction of City, from the City to the Disposal Site or Transfer Station following closure of Puente Hills Landfill (including the Transfer Station gate fees and other commercially reasonable costs of transfer, in such amounts as may be demonstrated by Franchisee to the satisfaction of City), and upon the completion of the MRF/TS, the MRF/TS gate rate (inclusive of processing, transportation and disposal).

1.2.18 Disposal Site. "Disposal Site" means a final end-point or permanent site for the disposal of Solid Waste, such as a landfill, incineration facility or final processing facility for Recyclables. Franchisee currently uses Puente Hills Landfill as the Disposal Site. Puente Hills Landfill is scheduled to close in 2013. Thereafter, Franchisee will use another landfill of its choice that may be more distant from the City. Franchisee or its affiliates may dispose of Solid Waste hereunder prior to the closing of Puente Hills Landfill at other landfills in the region, as selected by Franchisee, in order to prepare for the closure of Puente Hills Landfill and otherwise to assure efficient solid waste operations

1.2.19 Divert or Diversion. "Divert" or "Diversion" means to divert from disposal facilities or transformation facilities (including incineration, pyrolysis, distillation, gasification or biological conversion) through source reduction, Recycling and composting, as provided in Section 41780 of the Act as such act may be hereafter amended or superseded provided that Divert or Diversion shall include delivery to transformation facilities if the overall Diversion achieved by the City is at a level where delivery to such facilities shall be considered Diversion pursuant to the Act.

1.2.20 Effective Date. Generally, the term "Effective Date" means the date on which the parties execute this Agreement. Franchisee's performance hereunder shall commence on a date to be agreed upon between the parties within sixty (60) days of the Effective Date.

1.2.21 Facility Operations Agreement. "Facility Operations Agreement" means the Franchise and Facility Operations Agreement to be entered into by and between Franchisee and the City for the operations of the MRF/TS at the MRF/TS Site.

1.2.22 Franchisee. "Franchisee" means Arakelian Enterprises, Inc., dba Athens Services.

1.2.23 Franchise Documents. "Franchise Documents" means Chapter 8.20 as the same exists or may be amended in the future of the Municipal Code of the City of Irwindale and this Agreement.

1.2.24 Franchise Fee. "Franchise Fee" means that consideration paid by Franchisee to the City as consideration for the grant of exclusive franchise effected by the Agreement and as described in Section 3.3.1 hereof. The Franchise Fee includes all amounts that the City is lawfully entitled to charge for the impacts of Franchisee's performance hereunder on City's streets, sidewalks, curbs, gutters and other infrastructure.

1.2.25 Franchisee Provided Container or Container. "Franchisee Provided Container" or "Container" refers to either a Bin or a Cart provided by Franchisee to customers receiving Franchisee's automated curbside service. Carts shall be constructed of a minimum of twenty percent (20%) post-consumer recycled content.

1.2.26 Green Waste. "Green Waste" means any and all forms of biodegradable plant material, excluding palm fronds, which can be placed in a covered Container, such as wastes generated from the maintenance or alteration of public, commercial or residential landscapes including, but not limited to, yard clippings, leaves, tree trimmings, prunings, brush, and weeds as well as green waste. Tree stumps and limbs greater than three (3) inches in diameter are excluded unless they are reduced to a chipped form; otherwise, such large portions of Green Waste shall be considered Bulky Waste.

1.2.27 Gross Revenues. "Gross Revenues" means all monies, consideration and revenue received by Franchisee in connection with the services carried out under this Agreement, but shall not include (i) Franchisee's Net Recycling Revenues from the processing, transportation, or sale of Recyclables, or (ii) any revenues generated directly by Franchisee's MRF/TS to the extent such MRF/TS revenues are, or will be in the future, part of the calculation of a "host fee" payment by Franchisee to the City in accordance with the MRF/TS Agreements. Otherwise, Gross Revenues shall include all charges to customers that are actually collected by Franchisee (regardless of whether said revenues reflect cost "pass-through" of Franchisee's actual costs to Franchisee's customers) for services performed under this Agreement.

1.2.28 Hazardous Waste. "Hazardous Waste" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iv) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (v) defined as a "hazardous substance" under Section 25281 of

the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (vi) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (ix) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. Section 1317; (xi) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. § 6903); (xii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. § 9601); (xiii) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*; or (xiv) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in effect.

1.2.29 Household Hazardous Waste or HHW. "Household Hazardous Waste" or "HHW" shall mean that waste resulting from products purchased by the general public for household use which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed, or otherwise managed.

1.2.30 Household Waste. "Household Waste" shall mean that waste normally generated by a Single-Family Residential Unit or a Multi-Family Residential Unit.

1.2.31 Infectious Waste. "Infectious Waste" means waste capable of producing an infection or pertaining to or characterized by the presence of pathogens including, but not limited to, certain wastes generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals and medical testing labs and any waste that includes animal wastes.

1.2.32 Materials Recovery Facility. "Material Recovery Facility or MRF" shall mean a transfer station owned and operated by Franchisee, which is designed to, and as a condition of its permit shall, source separate or recover disposed materials for reuse, Recycling or other Diversion from the waste stream.

1.2.33 Maximum Rate Schedule. "Maximum Rate Schedule" means that schedule of maximum rates to be charged to Residential and Commercial Units located in the City by Franchisee for Franchisee's waste hauling services, which Maximum Rates are effective as of the Effective Date of this Agreement and attached hereto at Exhibit A. A Residential Unit is a single family home or each unit in a multi-family property comprised of not more than four units. A Commercial Unit is a single business location.

1.2.34 MRF/TS. "MRF/TS" means the to-be-developed Materials Recovery Facility and Transfer Station owned and operated by Franchisee as described in Recital G hereto and located at the MRF/TS Site.

1.2.35 MRF/TS Agreements. "MRF/TS Agreements" means those contracts governing the development or expansion and operation of Franchisee's MRF/TS in the City of Irwindale, including, but not limited to, the deposit agreement for payment of environmental assessment costs undertaken by the City or other governmental agencies related to the MRF/TS and other costs relative to the sale of the Site, issuance of entitlements and other approvals for, and authorization of operations at, the MRF/TS, as such deposit agreement may be amended, the Development Agreement conveying the City entitlements to construct and operate the MRF/TS, the Disposition and Development Agreement between Franchisee and the City's Redevelopment Agency and the Facility Operations Agreement.

1.2.36 MRF/TS MOU. "MRF/TS MOU" means that certain Memorandum of Understanding Relating to a Solid Waste Materials Recovery Facility / Transfer Station Agreements entered into by and between Franchisee, the City and Agency on or about June 25, 2008 and amended on April 13, 2011.

1.2.37 MRF/TS Site. "MRF/TS Site shall mean the real property located at the intersection of Live Oak Avenue and Arrow Highway in the City of Irwindale, currently owned by the Irwindale Community Redevelopment Agency and proposed to be transferred to Franchisee for the development and operation of the MRF/TS.

1.2.38 Multi-Family. "Multi-Family" means a development of four (4) or more Residential Units, including a condominium project, townhouse project, apartment house, or mobile home park, irrespective of whether residence therein is transient, temporary or permanent, such that all Residential Units dispose of Solid Waste and/or Recyclable Materials in a communal Bin(s) at centralized locations.

1.2.39 Net Recycling Revenues. "Net Recycling Revenues" means the gross recycling revenues received by Franchisee from the sale of Recyclable Materials, less processing costs incurred by the Franchisee and less amounts paid to recipients of materials (negative value). Wood and concrete waste are examples of materials that may have a negative value.

1.2.40 Oil Waste. "Oil Waste" means used motor oil and used oil filters.

1.2.41 Owner. "Owner" means the person, organization or corporation holding the legal title to the real property constituting the Premises to which solid waste management services are provided or required to be provided. For the purposes of provisions in this Agreement pertaining to the sending of notices, billings or other communications by Franchisee to an Owner, Franchisee may regard as the Owner the person, organization, corporation or other entity shown in the records of the Assessor of the County or as may be indicated by documents recorded in the Office of the Recorder of the County.

1.2.42 Premises. "Premises" means any parcel of land, building(s) and/or structure(s), or portion thereof, in the City where Municipal Solid Waste is produced, generated or accumulated and which is billed as one customer or one Multi-Family complex.

1.2.43 Reasonable Business Efforts. "Reasonable Business Efforts" means those efforts a reasonably prudent business person would expend under the same or similar circumstances in the exercise of such Person's business judgment, intending in good faith to take steps calculated to satisfy the obligation which such Person has undertaken to satisfy.

1.2.44 Recyclable Materials or Recyclables. "Recyclable Materials" or "Recyclables" interchangeably mean any product salvaged or collected for the purpose of reprocessing or remanufacturing including, but not limited to, glass, newsprint, aluminum, cardboard, paper, Green Waste, wood, plastics or metal.

1.2.45 Remodel. The term "Remodel" or "Remodeling" shall refer to any construction or demolition project (other than mere repair work) requiring the issuance of a building permit *or* such construction and demolition project that generates for disposal bulky structural items, appliances (household or commercial) like showers, tubs, toilets, ovens, stoves, cabinetry and built-in units, roofing materials, etc., and other C&D Material.

1.2.46 Residential Unit. "Residential Unit" shall mean any individual dwelling unit used for or designated as a single-family residential as either (i) a Single Family Unit or (ii) a single unit in a Multi-Family Unit.

1.2.47 Solid Waste. "Solid Waste" means all solid wastes generated by Residential and Commercial sources, City Facilities, and all solid waste generated at construction and demolition sites, which are collected and transported under the authorization of the City or are self-hauled by residents or contractors. Municipal Solid Waste does not include agricultural crop residues, mining waste and fuel extraction waste, forestry wastes, ash from industrial boilers, furnaces and incinerators or Hazardous Waste, any waste which is not permitted to be disposed of at a Class III landfill and which fall within the definition of "Nonhazardous Solid Waste" set forth in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations as amended or designated Class II wastes. Materials shall be deemed "Solid Waste" consistent with the meaning of California Public Resources Code Section 40191, and for purposes of this Agreement shall be regulated as such.

1.2.48 Single-Family. "Single-Family" means Premises used or designated for residential use and consisting of no more than one (1) Residential Unit, such that the Single-Family Residential Unit receives its own set of Carts and individual curbside collection services therefore.

1.2.49 Source Reduction. "Source Reduction" means the process of reducing the amount of waste produced by the person or organization generating such waste. Source Reduction occurs through the use of alternative goods and products and/or the reuse of goods and products.

1.2.50 Source Separated. "Source Separated" describes the segregation, by the generator, of materials designated for separate collection for some form of materials recovery or special handling.

1.2.51 Term. "Term" means the effective period of this Agreement as defined in Section 4.1.

1.2.52 Waste Diversion or Diversion. "Waste Diversion" or "Diversion" means to divert from Disposal Sites or transformation facilities (including incineration, pyrolysis, distillation, gasification or biological conversion) through source reduction, Recycling and composting, as provided in Section 41780 of the Act, provided that "Divert" or "Diversion" shall include delivery to transformation facilities if the overall Diversion achieved by the City is at a level where delivery to such facilities shall be considered Diversion pursuant to the California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000 *et seq.*

1.3 Delegation of Authority. The administration of this Agreement by the City shall be under the supervision and direction of the City Manager and the actions specified in this Agreement shall be taken by the City Manager or his/her designee.

ARTICLE II *FRANCHISE DOCUMENTS*

All of the provisions of the Franchise Documents are incorporated and made a part of this Agreement as though set forth in full. Nothing shall prevent the City from amending provisions of Chapter 8.20 of the Municipal Code concerning waste hauling or recycling operations or from adopting such other and further legislation as the City deems necessary or appropriate; provided, however, that the City shall give Franchisee ten (10) days, notice prior to considering any such amendment or further legislation, if such would affect costs of revenue under this Agreement; provided, however, failure to give such notice shall not invalidate the amendment. In the event that the City enacts any legislation or otherwise imposes any new regulations, restrictions or requirements, that have the effect of reducing Franchisee's revenues or increasing Franchisee's costs hereunder, the parties shall adjust the rates to reflect the increase in costs or the decrease in revenue.

ARTICLE III *GRANT OF FRANCHISE; SCOPE OF FRANCHISE; EXCLUSIONS*

3.1 Grant of Franchise

3.1.1 General Grant. The City grants to Franchisee and Franchisee shall have during the Term of this Agreement, the exclusive franchise, right, license and privilege (except as provided in Section 3.2 below) to engage in, the business of collecting, transporting, transferring, processing, recycling, treating, diverting and collecting for disposal all Solid Waste and Recyclable Materials generated by Residential or Commercial establishments within the City of Irwindale. Franchisee's exclusive franchise shall include the exclusive right to provide Carts and Bins for Solid Waste disposal and collection. It is expressly understood that the Solid Waste management business is conducted by Franchisee and not City, and while City grants the right to

conduct the business within the terms of this Agreement, the Franchisee must determine what personnel to employ, terms and conditions of employment, what equipment to utilize and at what cost, rates and charges to establish for customers and all methods, costs, obligations and mechanisms to undertake the terms of the franchise.

3.1.2 Duty. To the extent that the franchise granted hereby is exclusive, it shall be so only if contractor is and shall be at all times ready, willing and able to perform its obligations under this Agreement, including but not limited to, collecting, processing, transporting and disposing of all Solid Waste generated within the City in accordance with the provisions of this Agreement and all applicable laws, rules and regulations.

3.1.3 Annexations. This Agreement shall extend to any territory annexed to the City during the Term that is not covered by an existing Solid Waste permit, license, agreement or franchise granted by another public entity shall be added hereto, except to the extent that collection by Franchisee within that annexed territory would violate the provisions of Public Resources Code Section 49520. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and City agrees that it shall cooperate with Franchisee to fulfill any requirement necessary for Franchisee to serve the annexed area consistent with this Section 3.1.3.

3.2 Scope of Franchise; Mandatory Service And Exclusions. The franchise granted to Franchisee shall be exclusive within City limits such that Franchisee shall be the sole provider of general Solid Waste and Recyclable Materials hauling services to City residents and businesses. To this end, at all times during the Term of this Agreement the City shall require the Owner of each Residential and Commercial Unit where Solid Waste is produced to subscribe to the collection service provided for in this Agreement and as will be required under the Irwindale Municipal Code. The hauling services franchise herein granted shall be subject to the following exclusions:

3.2.1 Intergovernmental Immunity. All (i) universities, (ii) school districts, (iii) other state agencies, (iv) any other governmental entity that is not subject to the City's police powers, and (v) the exclusivity provisions of any ordinance to be adopted by the City;

3.2.2 Self Hauling. Self-hauling by City residents and contractors. To qualify as a "self-hauler" for purposes of this exemption, an Owner or occupant must remove and personally transport from his/her own Premises using his/her own equipment for the purpose of lawfully delivering same to a Disposal Site or Materials Recovery Facility/Transfer Station authorized to receive and handle Solid Waste or Recyclables. City shall, upon the commencement of operations at the MRF/TS and upon the ability of the MRF/TS to accept such waste, direct self haul to the MRF/TS to the extent allowed by law. The use of a subcontractor is not "self haul" within the meaning of this exception;

3.2.3 Gardner/Landscaper Green Waste. Green Waste and other compostables removed from a Premises by an Owner or resident of Premises or by a gardening, landscaping or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service. To qualify for this exemption, a gardener or

landscaper must not be a hauling service or Solid Waste enterprise, must not separately or additionally charge for the incidental service of removing, transporting or disposing (except for tipping fee) of the Green Waste, and must utilize only his or her own employees and equipment to collect, transport and dispose of said Green Waste. City shall, upon the commencement of operations at the MRF/TS and upon the ability of the MRF/TS to accept such Green Waste, direct such Green Waste to the MRF/TS to the extent allowed by law;

3.2.4 C&D Material. The collection, transportation and disposal by a construction contractor of C&D Material from Remodeling jobs, which are generated as an incidental part of providing such Remodeling services, provided that the construction contractor: a) is not a hauling service or solid waste enterprise; b) does not separately or additionally charge for the incidental service of removing, transporting or disposing (except for tipping fee) of the C&D Material; c) causes the C&D materials to be processed so as to divert a percentage of such materials equal to or greater than the percentage of diversion of C&D materials processed by Franchisee; d) has a license issued by the City for collecting and hauling C&D material; and e) utilizes only his/her own employees and equipment to collect, transport and dispose of the C&D Material. City shall, upon the commencement of operations at the MRF/TS and upon the ability of the MRF/TS to accept such C&D, direct C&D to the MRF/TS to the extent allowed by law.

3.2.5 Automotive Dismantling. The collection, transportation and disposal of vehicles or machine parts and waste generated by an automotive/vehicle dismantler or Owner of a vehicular salvage or disposal yard.

3.2.6 Asphalt/Concrete/Dirt Materials. Franchisee's franchise does not preclude the collection, processing and/or transport of asphalt, concrete and dirt, and the Parties hereto acknowledged that other entities in the City are, and shall continue to, be permitted to collect, process and transport asphalt, concrete and dirt materials;

3.2.7 Hazardous Waste. Franchisee's franchise does not preclude the collection, processing and/or transport of Hazardous Waste and non-spadeable wastewater or sewage sludge by third-party entities duly licensed to handle such Hazardous Waste and/or non-spadeable wastewater or sewage sludge materials;

3.2.8 Recyclable Materials. Recyclable Materials not "discarded" (but rather sold or donated) by an Owner of Premises which is disposed of at legally-mandated public redemption centers that comply with all reporting and other requirements imposed by any political entity having jurisdiction over those redemption centers. In the event any such companies operate within the City, such companies shall have a current business license and shall meet all applicable requirements regarding the reporting of diversion, disposal and other matters pertaining to the City's compliance with State law. A mere discount or reduction in price of third-party charges for the handling of Recyclables is not a sale or donation within the meaning of this Agreement and is thus precluded by Franchisee's exclusive franchise;

3.2.9 Emergency Collections. The casual or emergency collection, removal, disposal or Diversion of Solid Waste by the City through City officers or employees in the normal course of their employment;

3.2.10 Legally-Required Exemptions. Other collection, removal or disposal activities required to be exempt from mandatory franchise services pursuant to law, or entities exempt from such franchise pursuant to State or Federal law, including but not limited to Non-City governmental entities located within City boundaries;

3.2.11 Unoccupied Units. Premises which have been unoccupied by any human habitation and upon which no refuse has been produced or accumulated for three (3) consecutive months may be exempted from this Agreement by the City until such Premises become occupied. The granting of an exemption shall be conditioned upon completion of an application for exemption and its approval by the City. Exemptions shall expire on December 31 of each calendar year. An exemption may be renewed, provided that during three (3) consecutive months prior to the application for renewal, the Premises have been unoccupied by any human habitation and no refuse has been produced or accumulated. Notwithstanding anything in this Section 3.2.11 to the contrary, all exemptions in existence on the Effective Date of this Agreement shall remain valid. For purposes of this Section, a unit shall be deemed "unoccupied" if the structure is both unoccupied and unused (such as, without limitation, foreclosed or abandoned structures). Structures that are presently unoccupied by virtue of their continuing use as a vacation home or a seasonal business shall not be considered as "unoccupied";

3.2.12 City Hauls. The collection, removal, disposal or Diversion of Solid Waste or Recyclables by the City through City officers or employees in the normal course of their employment; and

3.2.13 Oil Waste. The City utilizes another contractor/provider for the collection, transport and disposal of Oil Waste.

3.3 Compensation To City for Grant of Franchise.

3.3.1 Franchise Fee. In consideration for the grant of the franchise provided herein, Franchisee shall pay City a franchise fee equaling fifteen percent (15%) of Gross Revenues (the "Franchise Fee").

3.3.2 AB 939 Fee. In addition to the Franchise Fee, Franchisee shall pay City an AB 939 Fee of four and seventy eight one hundredths percent (4.78%) of Gross Revenue. Each such payment shall be accompanied by an accounting, which sets forth Franchisee's gross receipts collected during the preceding calendar, which AB 939 may be adjusted annually in the same manner as the Franchise Fee. The AB 939 Fee shall be a pass through in the Maximum Rate.

3.3.3 Payment Protocol. All payments to City required pursuant to Sections 3.3.1 and 3.3.2 above shall be made to City within thirty (30) days of the conclusion of each calendar quarter during the Term hereof, including any extension thereof. Upon the expiration of any such thirty (30) day period, a delinquent assessment of ten percent (10%) per month shall be levied against any unpaid balance. All remittances by Franchisee shall be accompanied by a report setting forth the basis and calculations used for computing the amount due. Each payment of the Franchisee Fee and AB 939 Fee shall be accompanied by a statement

separately setting forth the Gross Revenues collected by Franchisee and the computation of the total of each fee due. Each statement shall include the following certification executed by an officer of the Franchisee: "I hereby certify that the foregoing statement of Franchise Fees and AB 939 Fee payments is made by me, that I am authorized to make such statement, and that, to the best of my knowledge and belief, it is true, correct and complete."

No acceptance by City of any payment shall be construed as an accord that the amount is, in fact, the correct amount. Nor shall such acceptance of payment be construed as a release of any claim City may have against Franchisee for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recomputation by City pursuant to Article IX below.

3.3.4 Administrative Fee. In exchange for the City permitting Franchisee's hauling services and related franchise pursuant to this Agreement, Franchisee shall pay to City a one-time administrative fee equaling the total amount of the City's legal fees (attorneys' fees and costs) and staff/administrative costs incurred in the negotiation, research and drafting of this Agreement which amount shall be Twenty Five Thousand dollars (\$25,000) which amount shall be payable within thirty (30) days after Franchisee's commencement of services hereunder. Furthermore, this Agreement is subject to Franchisee's satisfaction of each and all of the conditions set forth herein, each of which may be waived in whole or in part by the City.

ARTICLE IV ***TERM OF AGREEMENT***

4.1 Term And Franchise Term.

4.1.1 Effective Date. The term of this Agreement commences on the Effective Date with Franchisee's performance to commence on a date to be agreed upon by the parties within sixty (60) days of the Effective Date and be co-extensive with the term of the Facility Operations Agreement for the operation of the MRF/TS, which will be thirty years after which the Facility Operations Agreement for the MRF/TS will be subject to automatic ten (10) year rolling extensions. Notwithstanding the foregoing, the term of this Franchise Agreement shall be subject to earlier termination as provided hereinbelow. The City is obligated to proceed in good faith towards the development of the MRF/TS subject only to the City's express reservation of its right to exercise its discretion under applicable law pertaining to entitlements and other governmental acts which the City may not waive or assign. In the event that the City elects not to proceed with the MRF/TS without good legal cause, as defined below, then the Term of this Agreement shall be reduced to an initial term of eleven (11) years which shall run from the date on which the City elects not to proceed with the MRF/TS (the "Modified Initial Term"). At the conclusion of the Modified Initial Term, this Agreement shall be subject to automatic one (1) year rolling extensions so long as Franchisee shall have met its obligations under this Franchise Agreement (the "Rolling Extensions"). Once the Modified Initial Term has expired, the term will continue for the 1 year period from the giving by the City of a Termination Notice, which may be provided by City to Franchisee with or without cause. Upon the execution of the Facility Operations Agreement, the term of this Agreement shall be conformed to the term of the Facility Operations Agreement so that the terms of the two Agreements are identical.

Notwithstanding the foregoing, the City shall have the right to cause the early termination of this Agreement prior to the commencement of operations at the MRF/TS as provided at Section 4.1.2, below.

4.1.2 Early Termination for Failure to Proceed with MRF/TS. In the event that either: (a) Either party for good legal cause, as defined below, determines not to proceed with the development of, issuing or securing entitlements for, operating or defending any legal or administrative challenge to the MRF/TS; or (b) City determines that Franchisee and/or its Affiliated companies have failed to proceed with Reasonable Business Efforts to develop and operate the MRF/TS (collectively (a) and (b) shall be referred to herein as “Failure to Proceed”), then the City shall have the right to terminate this Agreement as provided at Section 4.1.3, below. “Good legal cause”, as used herein, shall be based on the City’s lawful exercise of its discretion not to approve the MRF/TS based on its duly-exercised discretionary bases, including CEQA or other appropriate land use authority under the Irwindale Municipal Code, as currently existing, Government Code Sections 65864 et seq. or other discretion provided under State law applicable to the approval of the MRF/TS, or Franchisee’s determination, in its reasonable discretion and consistent with the MRF/TS MOU, to cease to further fund, develop, operate or defend any legal or administrative challenge to the MRF/TS, or the development or operation of the MRF/TS becomes prohibited, unlawful or unauthorized by any rule or decision of a court or authorized governmental agency. A Failure to Proceed shall be deemed to have occurred 1) in the event one party conveys to the other party the decision to cease further actions toward entering into the MRF/TS Agreements or processing or securing entitlements for, developing, operating or defending any legal or administrative challenge to the MRF/TS; 2) in the event that the City and Franchisee enter into MRF/TS Agreements that include a schedule for Franchisee’s development of the MRF/TS and in the further event that Franchisee fails to perform in accordance with the schedule for Franchisee’s performance set forth in such MRF/TS Agreements including any extensions any allowed therein or 3) for the period prior to the execution of MRF/TS Agreements providing a schedule for Franchisee’s development of the MRF/TS, a Failure to Proceed will have occurred in the event that Franchisee fails to proceed with the development of the MRF/TS as described below. The duty of Franchisee to proceed as described below and the duty of Franchisee to perform in accordance with the schedules to be established in the MRF/TS Agreements are referred to as “Franchisee’s Development Obligation.”

- through:
- (a) For the period from execution of this Franchise Agreement
 - i) final approval of MRF/TS Agreements;
 - ii) the issuance by the City and other governmental agencies of all permits necessary for the commencement of construction of the MRF/TS (“Project Entitlements”);
 - iii) the construction of the MRF/TS; and
 - iv) causing the MRF/TS to become operational,

Franchisee shall diligently pursue Franchisee's Development Obligation.

(b) Franchisee shall, within thirty (30) days of any Development Obligation arising, perform all acts reasonably necessary and pay all funds reasonably required to perform or to commence and diligently pursue performance of Franchisee's Development Obligation. Franchisee's Development Obligation includes, but may not be limited to, the payment of amounts due with respect to the Environmental Impact Report and other activities undertaken by the City or other governmental agencies with respect to the MRF/TS for which Franchisee has agreed to pay in the MRF/TS Agreements, the delivery of information reasonably requested by the City or its consultants, the filing of applications with governmental agencies including, but not limited to the City, construction of the MRF/TS, and other acts reasonably necessary to complete Franchisee's obligations to secure all entitlements for, develop, operate or defend legal or administrative challenges to, the MRF/TS.

(c) In the event that the City determines, in its reasonable discretion, that Franchisee has failed or refused, without lawful excuse, to meet Franchisee's Development Obligation, then the City shall give Franchisee a written notice of its determination ("Notice of Failure to Meet Obligation") specifying in reasonable detail the facts and circumstances of the alleged failure of Franchisee to meet its Development Obligation.

(d) Franchisee shall, within thirty (30) days of its receipt of a Notice of Failure to Meet Obligation, provide the City with a written response setting forth Franchisee's position with respect to the Notice of Failure to Meet Obligation and Franchisee's proposed schedule of performance to resolve the issues raised in the Notice of Failure to Meet Obligation ("Franchisee's Response To City's Notice"). Franchisee's Response to City's Notice shall specify any lawful excuse upon which Franchisee relies.

(e) The City and Franchisee shall meet and confer regarding the Notice of Failure to Meet Obligation following the City's receipt of Franchisee's Response to City's Notice. Following meeting and conferring, the City shall reasonably determine whether or not Franchisee has failed or refused to meet Franchisee's Development Obligation and whether or not Franchisee's conduct is excused.

(f) In the event that the City determines that Franchisee has failed or refused, without lawful excuse, to complete Franchisee's Development Obligation the City shall deliver a final notice of its determination to Franchisee ("Final Notice of Determination") specifying the City's findings and allowing a cure period of at least thirty days within which to cure the failure to perform Franchisee's Development Obligation or to commence performance and diligently continue to perform if the failure to perform Franchisee's Development Obligation is not reasonably capable of being cured within thirty days; provided such additional time shall not exceed 90 days, unless extended by mutual written confirmation of the parties' authorized representatives. The City shall not unreasonably refuse to extend the time within which Franchisee's failure to perform its Development Obligation may be cured for so long as the cure for such failure to perform Franchisee's Development Obligation may reasonably take and for so long as Franchisee is diligent in the performance of the cure.

(g) The City's determination that Franchisee has failed or refused to perform in accordance with the requirements of its Final Notice of Determination without lawful excuse shall constitute the City's determination that there has been a Failure to Proceed.

4.1.3 Upon a finding by the City of a Failure to Proceed, the City may reduce the term of this Franchise Agreement as follows:

(a) Reduction of Term Upon Adverse Finding. Upon a finding that there has been a Failure to Proceed, the City may, within one (1) calendar year of the finding of a Failure to Proceed, terminate this Franchise Agreement earlier than otherwise provided in accordance with subsection 4.1.3(b) immediately below.

(b) Calculation of Reduced Term. In the event of a finding of a Failure to Proceed, the term of this Agreement shall be reduced to five (5) years which shall run from the date of the notice terminating this Agreement sent after the finding of a Failure to Proceed.

4.2 Extension of Term for Convenience of City. The City may extend the term of this Agreement for up to six (6) months unilaterally or such longer period of time as to which Franchisee and City may agree. The City may exercise its right to extend this Agreement for any reason. During any such extension of this Agreement, Franchisee shall be entitled to the Maximum Rate as provided herein, including any increases in the Maximum Rate that may come due during the extension period.

4.3 Representations and Warranties of Franchisee.

4.3.1 Corporate Status. Franchisee is Arakelian Enterprises, Inc., doing business as Athens Services, a company duly organized, validly existing and in good standing under the laws of the State of California. Franchisee is qualified to transact business in the State of California and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

4.3.2 Corporate Authorization. Franchisee has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Franchisee (or the shareholders if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise, to authorize the execution of this Agreement. The persons signing this Agreement on behalf of Franchisee have authority to do so. Entering into this Agreement does not violate any provision of any other Agreement to which Franchisee is bound.

4.3.3 Accuracy of Representations. The representations and warranties made by Franchisee in this Section 4.2 are true and correct on and as of the Effective Date of this Agreement.

ARTICLE V
SERVICES OF FRANCHISEE

5.1 General Standards.

5.1.1 Furnishment of Services. The work to be performed pursuant to this Agreement shall include the furnishing of all labor, materials and equipment necessary for, and the collection of all Solid Waste and Recyclables from, Residential and Commercial Units within the City according to the terms of this Agreement, and the disposal, recycling and/or Diversion of such materials. Franchisee shall own or lease and maintain at its expense all equipment necessary to perform its duties as provided for under the Agreement, including sufficient radio equipment for office to field equipment communication. All work shall be accomplished in a courteous, thorough and workmanlike manner and adhere to the highest standards consistent with the best practice in the industry. As of the Effective Date of this Agreement, Franchisee shall not be required to collect materials unless they have been properly placed in Franchisee-Provided Containers unless otherwise specifically stated herein. Notwithstanding the foregoing, the Parties hereto acknowledge that a need may arise for Franchisee to collect materials that are either placed in alternative, *non*-Franchisee-Provided Containers or that are placed directly for collection without containment; to this end, the Parties may meet and confer in good faith in order to reach a mutually-agreement as to how such needs may be met. Any program specifically requiring Franchisee to collect materials from alternative containers or to collect uncontained materials shall be memorialized in writing executed by each Party.

5.1.2 Oversight of City Manager.

(a) Performance of each of the provisions of the Agreement shall be under the direction of the City Manager or his designee and the work hereunder shall be done in a thorough and workmanlike manner under the direction, and to the satisfactions, of the City Manager or his designee. To this end, the City Manager shall have the power to establish rules and regulations relating to the accumulation, collection, Recycling, disposal, and management of Solid Waste not inconsistent herewith and/or as necessary to ensure compliance with laws, ordinances and regulations, and which the City Manager finds are reasonably necessary for enforcement hereof or of applicable laws, ordinances and regulations, or for preservation of the public peace, health, and safety. Franchisee shall be given thirty (30) days written notice of any such changes in rules or regulations excepting in those circumstances where the changes are necessitated by an immediate threat to the public health, safety and/or welfare.

(b) The Parties may negotiate a means of recompensing Franchisee for material increases in Franchisee's costs as a result of either (i) new or changed rules and regulations by the City Manager, or (ii) other services required by the City that are in excess of those contemplated by this Agreement. If any such changes cause an increase or decrease in the cost of, or the time required for performance of the Agreement, an equitable adjustment shall be made in the Agreement price or schedule, or both.

5.1.3 Designated MRF/TS. Franchisee may transport all Solid Waste, Recyclables and Green Waste, at Franchisee's expense, to Franchisee's materials recovery facility in the City of Industry or directly to a landfill to be selected by Franchisee until the MRF/TS is developed in City and operational. When the MRF/TS is operational, Franchisee shall transport all Solid Waste, Recyclables and Green Waste collected hereunder to the MRF/TS and an adjustment in the Maximum Rates shall be allowed by the City as provided at Section 8.4, below. The MRF/TS shall be operational when Phase One of the MRF/TS has been completed

(a Certificate of Completion has been issued by the City) and testing of solid waste processing equipment is complete. The MRF/TS Agreements will include specific time frames for completion of Phase One of the MRF/TS, for equipment testing, and for the MRF/TS becoming operational.

5.1.4 Hazardous Materials.

(a) Except as otherwise specifically provided in this Agreement, Franchisee is prohibited from the collecting, transferring, processing or disposing of Hazardous Materials. Franchisee shall further be prohibited from collecting, transferring, processing or disposing of any Solid Waste or Recyclables that Franchisee is not permitted to process under its regulatory permits or applicable laws, ordinances or regulations. For purposes of any collection, handling, removal or processing of Hazardous Materials necessitated in the course of Franchisee's services hereunder, Franchisee shall employ one or more subcontractors duly-licensed to handle such Hazardous Materials.

(b) Franchisee shall implement a system of Hazardous Waste and Prohibited Material (as defined by CCR Title 22, Chapter 11, Sections 66261.1 through 66261.126) screening, identification, and prevention protocol reasonably designed to screen- out Hazardous Waste and Prohibited Materials that Franchisee is not permitted to handle pursuant to applicable law prior to Franchisee accepting such materials. If Franchisee inadvertently collects Hazardous Waste that Franchisee is not qualified or permitted to handle (under any applicable permit conditions or Applicable Laws), the Franchisee shall arrange, at no cost and without liability to City, for the proper disposal of the Hazardous Waste in accordance with applicable laws and regulations; provided however, that Franchisee shall be entitled to return any such Hazardous Waste, if the customer can be identified, or at its own expense pursue all legal rights and remedies it may have against the customer(s) who generated such Hazardous Waste. The City shall be indemnified by Franchisee from liability for any disposal of Hazardous Waste pursuant to Section 12.2 hereof.

5.2 Standards of Performance.

5.2.1 Availability of Franchisee. Franchisee has established, and shall continue to maintain a local office for the purpose of receiving customer payments and handling customer inquiries, orders and complaints. The "local" office must remain in a location within fifteen (15) miles of the City boundary and having the same telephone area code as that existing in the City. The local office shall be open to the public between the hours of 8:00 a.m. to 5:00 p.m., five (5) days per week, Monday through Friday, except Holidays. A representative of Franchisee shall be available during office hours for communication with the public at such local office. Additionally, the Franchisee shall continue to employ the services of a telephone representative, answering exchange or message system for calls during non-business hours and provide a telephone system sufficient and adequate to handle calls during peak periods.

5.2.2 Franchisee Liaison to City. Franchisee shall be reasonably available to the City. The Franchisee shall provide the City Manager and the Police and Fire Departments with an emergency telephone number for effectively reaching Franchisee in the case of off-hour emergencies. Franchisee shall also provide the City Manager with the cellular

phone number of a Franchisee representative(s) with day-to-day managerial responsibility over the Transfer Station and other Franchisee services provided within the City. One or more of the Franchisee's representatives described in this Section shall visit City offices at such reasonable times as the City Manager shall designate for the purpose of discussing any matters relating to this Agreement or the Franchisee's performance thereof. Franchisee's representative shall be primarily based at the MRF/TS or at the Franchisee's local office, or otherwise within City boundaries. Any representative appointed by Franchisee shall occupy a position of sufficient managerial authority and knowledge of day-to-day Franchisee operations as to be able to meaningfully discuss performance issues with the City Manager.

5.2.3 Citizen Complaints. The Franchisee shall commence response to all complaints within twenty four (24) hours, excluding weekends and holidays, shall return all customer phone calls within eight (8) business hours, and shall exercise Reasonable Business Efforts to resolve all complaints. The City may, but is not obligated to, respond to complaints that have not been addressed within two (2) business days and may charge the Franchisee for the actual costs incurred therefore. In connection herewith, Franchisee shall adequately staff its telephone system so that it is capable of handling all calls during peak business hours.

5.2.4 Record of Complaints. Franchisee shall maintain a record of all complaints received by mail, by telephone or in person (including date, time, name, address of complainant and nature of complaint) for a period of three (3) years. Franchisee will maintain records listing the date of consumer complaints, the customer, describing the nature of the complaint or request, and when and what action was taken by the Franchisee to resolve the complaint. At the request of City, Franchisee shall send copies of complaints or otherwise make such copies available to the City on a quarterly or more frequent basis.

5.2.5 Disputes. Disputes between the Franchisee and its customers regarding the services provided in accordance with this Agreement may be resolved by the City; provided, however, the City shall not be obligated to resolve any such disputes. The City Council by resolution may prescribe the procedures for processing customer complaints. The City's decision shall be final and binding unless challenged in a court of competent jurisdiction.

5.2.6 Tags & Record of Non-Collected Materials. The Franchisee shall notify customers in the event any item left for disposal is not picked up. Said notification shall be in the form of a written tag placed upon the customer's container, stating Franchisee's telephone, address and the reason for non-collection. Reasons for non-collection may include, but are not limited to the following: containers inaccessible to Franchisee (after Franchisee has made a reasonable effort to secure access); improper container or use of a non-Franchisee Provided Container; container overfilled; heavy container; or, the container includes Hazardous Waste. The Franchisee shall maintain a record of all items not collected. Should Franchisee fail to collect and dispose of materials set out or placed for collection at times required, after notification by City and a reasonable time thereafter, City may collect and dispose of uncollected materials and Franchisee shall be liable to the City for the expenses incurred, plus overhead charges equal to thirty (30%) of the City's expenses in collection.

5.2.7 Property Damage Caused by Franchisee. The Franchisee shall be responsible for the cost of repairing any property damaged by the negligent or intentional conduct of its employees or agents.

5.2.8 Quality of Service Surveys. The City may, at its own expense, conduct quality of service surveys of Franchisee's customers annually. Prior to finalizing the survey form, the City shall review the survey with the Franchisee. Results of the quality of service survey shall be reviewed with the Franchisee and used to discuss improvements in service delivery.

5.2.9 Annual Route Audit. At least once annually, Franchisee shall conduct an audit of its collection routes. The annual route audit shall include the truck identity servicing each route, number of accounts serviced per route (residential, commercial, industrial and municipal), frequency of pick-ups, size of container for each account on the route, frequency of service for each account on the route, as well as the weight of the truck and refuse delivered to the applicable Disposal Site. Results of the annual route audit shall be available for review by the City.

5.2.10 "On-Call" Equipment and Personnel. During normal business hours, the Franchisee shall have "on-call" at least one (1) truck to handle called-in pick-ups or missed collections. After normal business hours, the Franchisee shall have "on-call" the necessary manpower and equipment (including without limitation an emergency service vehicle to attend to complaints or emergency calls) to respond to customer emergencies that are an immediate threat to life or property. Franchisee's on-call equipment and personnel shall also be available to assist the City with debris collection and removal within a reasonable time resulting from emergencies and natural disasters, excepting that nothing in this Section shall require Franchisee to collect, haul or dispose of waste that Franchisee is not permitted to handle.

5.3 Hours & Dates of Collection. Contractor shall perform Collection Services within residential areas only between 7:00 a.m. and 6:00 p.m., Monday through Friday, day(s) to be specified. Saturday Collection hours shall be between 7:00 a.m. and 6:00 p.m., except during Holiday Collection which shall be between 7:00 a.m. and 7:00 p.m. Other Exceptions shall be effected only upon the mutual agreement between City and Contractor. City reserves the right to change the day of the week for Collection Services, provided it gives Contractor at least sixty (60) days prior written notice of such change. Contractor shall, in turn, notify Customers of such change at least thirty (30) days before implementation. Contractor may collect non-residential accounts at any time.

5.4 Holidays. Franchisee shall observe the following holidays annually (whereby there will be no collection services and collection shall occur one day late following the holiday): City-designated holidays are as follows:

- New Year's Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas

- Caesar Chavez Day

Franchisee shall provide Collection Services on the day after the holiday if the holiday falls on Monday through Friday. Regularly scheduled Collection Services will resume the following week. Under no circumstances shall Franchisee fail to provide Solid Waste Collection less than once per week due to a Holiday Schedule. Franchisee shall also observe any additional holidays coinciding with the holiday schedule observed by the County to the extent such County-observed holiday results in the closure of the County's Disposal Sites.

5.5 Residential Collections.

5.5.1 Frequency & Quantity of Collections. Collection service for Single-Family Residential Units shall occur at least once per week and shall permit the Owner of Premises to dispose of an unlimited quantity of Solid Waste or Recyclables generated at the residence to be collected by Franchisee, and Franchisee shall provide reasonable Container services to Premises if requested by Owner.

5.5.2 Containers. All Carts shall be the property of Franchisee, and shall be placed by Franchisee, following collection therefrom, in an upright position where found; provided, however, if Carts are found in a public street, the same shall be placed on the nearest curb, sidewalk, driveway, or parkway, and out of said street. Franchisee shall not place any Cart or other Container in a manner interfering with a public street or public right-of-way.

(a) *Multi-Family Containers & Collections.* Multi-Family complexes utilize one or more Franchisee Provided Container(s) (generally at least one Bin for Solid Waste) located at a central on-site location and shared by the multiple Residential Units. The location of Containers and the location for automated collection therefrom in Multi-Family complexes shall be mutually-agreed as between the Multi-Family site management and Franchisee, excepting that any storage or placement of Multi-Family Containers in public streets or rights-of-way shall be subject to the prior written approval of the City.

(b) *Single Family Containers & Collections.* Each Single Family unit receives two Carts. Unless otherwise directed by City, or necessary for safety reasons, Franchisee shall make all Single Family Residential collections from the curb along the street in front of each Single Family Residential Unit, except where paved alleys exist in the rear of such Premises in which case collections shall be made by Franchisee from alleys (provided, however, that this requirement cannot apply to a blind alley). In any event, Franchisee shall not be under any obligation to enter private courts or places, or other private property, to make collections from single Family Premises. Residents may elect to place Containers at an alternate collection location, if approved by Franchisee, provided that the placement and retrieval of containers complies with the requirements of Chapter 8.20 of the Irwindale Municipal Code. The cost of extra containers requested by residential customers is set forth on Exhibit A.

(c) *Notice of Residential Collection Schedule.* Franchisee shall post and maintain up-to-date written route schedules and maps of the routes on a publicly-accessible and easy-to-find website maintained by Franchisee for purposes of its hauling services and/or other waste management operations in the City.

(d) *Changes in Residential Collection Schedule.* City may require changes in the route schedule for among other things, to improve service or resolve complaints. Prior to the change of a route schedule, Franchisee shall provide written notice of the change to affected customers thirty (30) days in advance and shall post the changes on a publicly accessible website maintained by the Franchisee for purposes of its hauling services and/or other waste management operations in the City.

5.5.3 Non-Owned Containers and Enforcement of Exclusive Franchise. The City and Franchisee shall cooperate in the development of a procedure for enforcement of the exclusive franchise granted herein, which procedure shall include a means by which the City or the Franchisee will be entitled to impound commercial waste containers not owned by the Franchisee or otherwise are not properly in use so that their use is impermissibly competitive with Franchisee hereunder. City recognizes that the enforcement of Franchisee's exclusive franchise hereunder is important to the City and Franchisee because it regulates the collection and disposal of waste, aids in the maintenance of accurate information regarding the disposal of waste, and supports the requirement that all Solid Waste be delivered to the MRF/TS. To this end, City will pursue the development and adoption of an ordinance to effect such enforcement, which ordinance shall be developed in cooperation with Franchisee.

5.6 Commercial Collections.

5.6.1 Frequency of Commercial Service.

(a) *Frequency; Unlimited Collections.* Commercial Units shall be provided with a minimum one-time weekly collection; as with Residential Unit service, the Owner of Commercial Premises may make arrangements with Franchisee for more frequent collection services as needed to dispose of all Solid Waste generated by the Premises. Commercial Premises may share containers with neighboring business establishments provided that all sharing units either share the same legal parcel or are physically adjoining condominiums within the same condominium development.

(b) *Food Establishments.* Those Commercial Premises consisting of food processing operations shall utilize their own Container, rented to the operator by the Franchisee, for the disposal of food-related Solid Wastes (i.e., a Container not shared with other Commercial Premises unless such Premises sharing the Container are also food processing operations disposing of food-related Solid Wastes); the Containers used for disposal of food products shall be serviced at least twice per week.

5.6.2 Commercial Collection Locations. Unless expressly instructed by the City, Franchisee shall provide Franchisee Provided Containers only to those Commercial Premises that provide an appropriate location for such container in accordance with Chapter 8.20 of the Irwindale Municipal Code.

5.7 Residential Vacation Services & Periods of Premises Non-Occupancy.

Franchisee shall permit residential customers who are going on vacation or who otherwise miss a scheduled collection due to absence from the Premises to drop-off Solid Waste, Green Waste or Recyclables in amounts that would have been collected at curbside if the residential customer

was not on vacation at the MRF/TS after it commences operations during its normal business hours without incurring an additional charge. Such customers shall provide reasonable notice prior to dropping off such materials at the MRF/TS and confirmation that they are Residential Customers and that they were on vacation.

5.8 Collection of Bulky Waste. Contractor shall provide free Bulky Waste Collection to Residential Premises at the curbside or alleyway two (2) times per year, on dates scheduled by the City, which Collection shall be scheduled on regularly scheduled service days for Residential Waste Collection. Bulky Waste shall not be of a volume exceeding the capacity of a front loader bucket.

5.9 Christmas Tree Pickup. Franchisee agrees to collect Christmas trees at no additional charge to residents for a two (2) week period or more following December 25 of the applicable calendar year. In addition, Franchisee shall participate in any County Christmas Tree Recycling Program, if available.

5.10 On City Demand. Within twenty-four (24) hours of City notice to Franchisee, Contractor shall pick up and dispose of Bulky Waste, which has been deposited on public streets, or other public property located within the City. Contractor shall not charge the City for such Collection of Bulky Waste.

5.11 Service to City Facilities. The Franchisee shall collect not less than once per week, at no cost to the City, all Solid Waste, Recyclables, Green Waste and C&D Materials generated at the City Facilities, including Irwindale City Hall, Irwindale Community Center, Irwindale Senior Center, Irwindale City Library, Irwindale Police Department, Recreation Gym and Pool, Irwindale Corporate Yard, Alderson Storage site, Civic Center Park, Jardin de Roca Skate Park and Alice Rodriguez Circle Park. In addition, Franchisee shall, upon 24-hours following a request by the City, collect all abandoned Bulky Waste within a City right-of-way or easement without any additional cost to the City. City shall not have the right to dispose of large amounts of C&D from construction projects at no cost hereunder.

5.12 Processing of Waste at MRF/TS. In the event that the City approves the development of the MRF/TS, then Franchisee shall bring all Solid Waste, Recyclables, and Green Waste collected within the City hereunder to the MRF/TS when the MRF/TS is developed and able to process the Solid Waste, Recyclables, and Green Waste in the form it is collected in the City. Franchisee and its affiliated companies intend to pursue the development of the MRF/TS.

5.13 Community Relations. Franchisee's plan for public education and outreach, and community relations activities during the transition period to implement route changes and Recycling Collection for those Customers previously serviced through the Other Operator Franchise Agreements, reviewed by City, is attached as Exhibit C. Franchisee shall timely and fully implement such plan. If requested by the City, Franchisee shall provide public education materials for City-wide community clean-up events, monthly billing inserts and annual newsletter to Commercial Customers, the cost of such publications shall be the responsibility of Franchisee. City shall approve all public education and outreach materials. If requested by City, Franchisee will sponsor a recycling program in specified schools and community outreach

events. Any promotional materials or news releases will be developed with the approval of City and distributed by Franchisee.

5.14 News Media Relations. Franchisee shall notify City Representative by telephone followed by telefax of all requests for news media interviews related to the Services within twenty-four (24) hours of Franchisee receipt of the request. Before responding to any inquiries involving controversial issues or any issues likely to affect participation or Customer perception of services, Franchisee will discuss Franchisee's proposed response with City.

ARTICLE VI WASTE DIVERSION.

6.1 State Mandate. AB 939 currently sets the directive of Diverting fifty percent (50%) of the City's Solid Waste from disposal. If the City fails to implement its required plans to achieve the aforementioned directive under AB 939, the California Department of Resources Recycling and Recovery ("CalRecycle") may impose administrative civil penalties of up to TEN THOUSAND DOLLARS (\$10,000.00) per day until the City implements its plans. Furthermore, City anticipates that the State Legislature will adopt new legislation that will increase the minimum Diversion requirement. Upon the effective date of any new legislation that affects the Diversion requirements currently imposed by AB 939, Franchisee agrees to implement a revised or new Diversion program meeting such amended legislative requirements and, except as provided below in this Section 6.1 when the MRF/TS is operational, City agrees to adjust the Maximum Rates as may be reasonably necessary to cover the marginal additional cost of meeting such legislative requirement and a reasonable profit thereon. Franchisee will have the right to such price adjustment in the event that Franchisee can demonstrate that any amended legislative requirement or any change in regulations requires a level of effort greater than the level of effort then being undertaken by Franchisee with respect to diversion. Franchisee's level of effort, combined with other factors applicable in the City, currently result in diversion of at least fifty percent. Until the MRF/TS is operational, to the extent that changes in law or regulation either reduce the amount of diversion by re-characterizing or re-defining diversion or increase diversion requirements above 50% or both, City agrees that it will adjust pricing as may be reasonably necessary to fund programs to achieve the required diversion percentage. Failure of either party to exercise its best efforts to implement an amended Diversion program based upon new State legislation mandating new Waste Diversion levels shall constitute a default under this Agreement. Commencing when the MRF/TS is operational and the Maximum Rates have been adjusted hereunder to account for the gate fee at the MRF/TS, Franchisee shall only be entitled to an adjustment in the Maximum Rates allowed hereunder to fund programs to achieve the required diversion percentage to the extent that changes in law or regulation either reduce the amount of diversion by re-characterizing or re-defining diversion or increase diversion requirements above 70% or both.

6.2 Joint Responsibilities; Development of Diversion Program. The City and Franchisee shall meet and confer in good faith to jointly develop Solid Waste Diversion strategies and develop a program adequate to meet the requirements established by the State. In the event of any change to State or regional laws, regulations or mandates setting new Diversion requirements applicable to the City, the Parties shall promptly meet and confer to negotiate in good faith the implementation of such amendments to law through the City's Solid Waste

Diversion program. City and Franchisee shall reasonably cooperate in good faith with all effort by each other to meet City's AB 939 diversion requirements and otherwise to ensure compliance with the Act including, without limitation, requests to CalRecycle pursuant to Public Resources Code §§ 41785 and/or 41820. If the City and Franchisee cannot agree on a program within thirty (30) days after initially commencing any meet and confer process, City shall be entitled to specify the program to be implemented, provided that, in any event, the City shall adjust the Maximum Rates as required under Section 6.1, above.

6.3 Franchisee Waste Diversion Responsibilities.

6.3.1 Cooperation and Education. The Franchisee shall cooperate with the Solid Waste Diversion activities of the City and shall coordinate Diversion activities and programs to the extent possible. The Franchisee shall cooperate with the City's efforts to develop and implement public education and information programs designed to promote Source Reduction, Recycling and composting in general as well as specific Waste Diversion strategies. Franchisee shall have a public education program in place by which it will distribute free educational information about Solid Waste management and Recycling to customers in their regular bills.

6.3.2 Implementation of Strategies and Penalties. The Franchisee shall implement the strategies jointly developed and agreed to by the Parties. If Franchisee's failure to perform its obligations under this Section 6.3 results in the imposition of penalties against the City pursuant to the provisions of AB 939, Franchisee shall protect, defend with counsel approved by City, indemnify, and reimburse the City (including its officers, directors, employees and agents) for such fine or penalty within thirty (30) days of its imposition. City acknowledges that to meet the mandates of AB 939, additional and significant legislation affecting the disposal of Solid Waste not covered by this Agreement may be required. Excluded from Franchisee's foregoing indemnification and reimbursement obligations for AB 939 fines are any fines or penalties the imposition of which results from, or is attributable to, a determination by City to not implement recommended lawful programs or to eliminate, suspend or reduce existing lawful diversion programs.

6.3.3 Diversion at Franchisee's MRF/TS. Franchisee shall adopt such diversion programs as may be reasonably necessary to meet all mandated diversion requirements.

6.3.4 Waste Diversion Reporting Requirements. The Franchisee shall comply with the Waste Diversion reporting requirements established by the City. Franchisee shall provide City with quarterly written reports forty five (45) days after the end of each quarter in a form acceptable to the City and adequate to meet City's reporting requirements to CalRecycle on compliance with AB 939, including a breakdown of the type and quantity of waste (by weight and volume) hauled by Franchisee, generator type and program area, the type and quantity of Recyclable Materials, HHW (as may be inadvertently received by Franchisee), Green Waste and Bulky Waste, and including a discussion of the quarterly waste Diversion percentages achieved during the year. Franchisee shall report such information on a monthly basis. Monthly records will allow for reporting of seasonal variation in waste quantities and will assist in program operation, improvement and expansion. Franchisee shall reasonably assist the

City to meet any County, State, or Federal reporting requirements pertaining to Solid Waste, Recycling, Green Waste or other matters pertaining to this Franchise Agreement.

6.3.5 Meet and Confer Process. If Franchisee fails to Divert the required amount of the City's Solid Waste, as described in this Agreement, where there has not been any legislation that would trigger the process set forth at Section 6.1, above, Franchisee and City shall meet and confer to develop a revised or new Diversion program. If the City and Franchisee fail to agree on a revised or new Diversion program within ninety (90) days of commencing the meet and confer process (which date may be extended by mutual written agreement), notwithstanding anything to the contrary contained herein, City may elect, in its sole discretion, to terminate this Agreement on sixty (60) days written notice. Franchisee agrees to continue performance under this Agreement until City hires a new contractor. Franchisee shall be solely responsible for payment of all penalties and other costs and expenses incurred by the City resulting from inadequate diversion for the period of time during which the City shall have failed to meet applicable diversion requirements.

6.4 Recycling Program.

6.4.1 Recycling. Upon the completion and commencement of operations of the MRF/TS, Franchisee shall conduct mixed waste processing of Solid Wastes and Recyclables at the MRF/TS. Prior to commencement of operations at the MRF/TS, and upon request, any customer of a Commercial Unit, or City Facility may request the provision of a Bin or Cart (to be provided by Franchisee at a reduced rate as set forth on Exhibit A) dedicated to the discarding and collection of Recyclable paper and/or cardboard items.

6.4.2 Ownership of Solid Waste and Recyclable Materials. Except as otherwise provided by law, once Solid Waste, Refuse, Recyclable Materials and/or Green Waste have been collected by Franchisee, ownership transfers to Franchisee. Franchisee is hereby granted the right to retain, recycle, compost, dispose of and otherwise use such waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by Franchisee. Subject to the provisions of this Agreement, and excepting any material which is not a waste material and which was inadvertently discarded, Franchisee shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of or use the refuse which it collects. Solid Waste and any other material which is disposed of at a Disposal Site or sites (whether landfill, transformation facility, transfer station or material recovery facility) shall, as between the City and Franchisee, remain the responsibility of the Franchisee, and Franchisee shall retain ownership of the same.

6.4.3 Franchisee As Authorized Recycling Agent. City hereby designates Franchisee as an authorized recycling agent (though not the sole agent) for the purposes of conducting recycling activities within the City pursuant to the terms of Public Resources Code Section 40105. Notwithstanding the foregoing, Franchisee at all times shall be and remain independent from the City.

ARTICLE VII
VEHICLES, EQUIPMENT AND PERSONNEL

7.1 Vehicles.

7.1.1 General. Franchisee shall continue to provide a fleet of collection vehicles sufficient in number and capacity to perform efficiently the work required by this Agreement in strict accordance with its terms. Franchisee agrees to maintain each piece of equipment used by it in good order and repair. All vehicles shall be uniformly painted. All vehicles shall be registered with the California Department of Motor Vehicles and shall meet or exceed all applicable State and local requirements. Each vehicle shall also carry a fire extinguisher, first aid kit and a broom and shovel to be used for the immediate removal of any spilled material. All spilled material shall be immediately removed by Franchisee. Franchisee shall be responsible for the cost of repairing all damage to driveway approaches caused by Franchisee's vehicles. Franchisee's fleet of vehicles shall meet applicable regulations including AQMD Rule 1193 provided that Franchisee will forthwith upon approval of this Agreement by the City place orders for AQMD 1193 compliant vehicles and will integrate such vehicles into Franchisee's operations as such vehicles come available.

7.1.2 Truck Bodies. All truck bodies used by Franchisee shall be constructed of metal, shall be watertight and leak-proof and shall be so constructed as to prevent odors or the falling, leaking or spilling of Solid Waste, Recyclables, or other materials. Franchisee shall maintain all trucks and equipment used within City in good mechanical condition and the same shall be clean and uniformly painted and numbered. All trucks and equipment shall have painted thereon, or affixed thereto, in letters and numbers at least six (6) inches in height, the name and telephone number of Franchisee, which name and telephone shall be clearly visible at all times. Each vehicle utilized by Franchisee shall be identified by numerals at least six (6) inches in height in a location or locations on such vehicles to be specified by City. A list showing each vehicle so identified shall be made available to City and maintained in the current status by Franchisee and, upon notice given by City, Franchisee shall make the equipment available for inspection. If City finds that any truck or equipment being used by Franchisee is not in satisfactory condition then the truck or equipment requiring correction of defects shall not be used by Franchisee in the performance of the Agreement until corrected to the reasonable satisfaction of City. In addition, if Franchisee's trucks are inspected by any other public agencies, copies of any inspection report shall be made available to the City upon request.

7.1.3 Backup Alarm. Each vehicle used for collecting, hauling or disposing of Solid Waste and/or Recyclables shall be equipped with an audible warning device that is activated when the vehicle is backing up.

7.1.4 Gross Vehicle-Weight Limit. No vehicle used for collecting, hauling or disposing of Solid Waste and/or Recyclables shall be loaded in excess of the manufacturer's gross vehicle weight rating or in excess of the maximum weight specified by the California Vehicle Code, whichever is less provided that an occasional good faith mistake regarding the weight of a load shall not constitute a breach of this Agreement, but shall be

subject to the liquidated damage provisions of Section 10.13. Evidence of the manufacturer's name and gross vehicle weight rating shall be maintained in, or upon, every vehicle.

7.1.5 Preventive Maintenance and Repair Program. Within thirty (30) days of the Effective Date of this Agreement, Franchisee shall have implemented a complete and comprehensive preventive maintenance and repair program, or if such repair program has already been implemented, Franchisee shall continue its performance thereof. Franchisee shall provide a copy of its preventative maintenance program to City for its review and approval, or if such a program has already been approved by the City, Franchisee shall notify the City of any updates to the program for City approval. Franchisee shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule and shall inspect each vehicle daily to ensure that all equipment is in good working order. Franchisee shall keep accurate records of all vehicle maintenance and repairs, recorded according to date and mileage, nature of maintenance or repair and the signature of a maintenance supervisor or mechanic that the maintenance or repair has been properly performed. Franchisee shall make such maintenance records available to City on request.

7.1.6 Vehicle Cleaning. Each vehicle used within the City shall be cleaned thoroughly by washing with water after each day's use. Vehicles shall be washed completely at least once a week and steam-cleaned on a regular basis so as to present a clean appearance and minimize odors, but in no event less than once a month.

7.1.7 Vehicle Storage. No vehicle used by Franchisee in performance of this Agreement shall be stored on any public street or other public property in the City. All Franchisee's vehicles if kept within the boundaries of the City shall at all times when not in use be kept on property of the proper zone either within a building or fenced yard, or at Franchisee's own MRF/TS site.

7.2 Container Condition. Franchisee at its sole cost and expense shall maintain all Franchisee Containers in good condition and repair as needed and shall clean and/or paint (for Bins) each container as needed and as reasonably requested by City. More frequent cleaning and painting shall be conducted by Franchisee if needed. Franchisee shall, at no charge, replace any Franchisee Provided Containers (Carts or Bins) which become unusable by reason of normal conditions of wear and tear. If damages occur to a Franchisee Provided Container necessitating repairs or replacement of the Container, and if said damages were incurred as a direct result of customer negligence, customer shall be liable for such repair costs and/or replacement costs for the Container. During all times that a Franchisee Provided Container is in the custody and control of Franchisee, Franchisee shall not store such Container in or on public streets or rights-of-way.

7.3 Inspections.

7.3.1 City Inspections. Franchisee shall give the City a copy of any written reports received by Franchisee from the CHP pertaining to CHP's inspection of Franchisee's vehicles employed in performing hereunder. City reserves the right to cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being

maintained in compliance with the provisions of Chapter 8.20 of the Irwindale Municipal Code, as may be amended and the State Vehicle Code, including but not limited to California Vehicle Code Sections 27000(b), 23114, 23115, 42030, 42032, and all Vehicle Code Sections regarding smog equipment requirements. City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service shall be returned to service until it conforms to applicable codes and such conformance has been acknowledged by City.

7.3.2 Brake Inspections. The brake system of each vehicle used in performance of this Agreement shall comply with State law.

7.3.3 Correction of Defects. Following any inspection, the City Manager shall have the right to reasonably require Franchisee to take out of service any vehicles and equipment not in good working order and cause Franchisee to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly within thirty (30) days of notification of defect in such vehicle or equipment. The City Manager's determination may be appealed to the City Council.

7.4 Personnel.

7.4.1 General. Franchisee shall furnish such qualified drivers, mechanical, supervisory, clerical and other personnel as may be necessary to provide the services required by this Agreement in a courteous, safe and efficient manner. Franchisee shall keep itself fully informed of existing and future State and Federal laws, rules and regulations rules and orders in any manner affecting those engaged and employed in or on the work contemplated herein or in any way affecting the conduct of that work and of all orders or decrees of bodies of officials having jurisdiction or authority over the same, and shall, at all times, observe and comply with and cause any and all persons employed by Franchisee or under Franchisee cause to observe and comply with all such laws, ordinances, rules, regulations, orders and decrees. Franchisee and any subcontractors and/or employees under Franchisee shall comply with and be governed by the laws of the State of California having to do with working hours as set forth in the Labor Code of the State of California, as the same may be amended from time to time.

7.4.2 Driver Qualifications. All drivers shall be trained and qualified in the operation of collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

7.4.3 Uniforms and Identification Badges. Franchisee shall require its drivers and all other collection personnel to wear a suitable and appropriate uniform as a means of identifying the employee. All other employees of Franchisee who come into contact with the public shall carry suitable identification badges or cards upon their person.

7.4.4 Employee Appearance and Conduct. All employees, while engaged in the collection of Solid Waste and/or Recyclables within the City or otherwise engaged in services described in this Agreement, shall be attired in uniform. At least one member of every collection truck crew shall be able to read and speak English. Franchisee shall use its best efforts to assure that all employees present a neat appearance and conduct themselves

in a courteous manner. Franchisee shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Franchisee shall take all appropriate corrective measures.

7.4.5 Background Check. The City reserves the right to perform a security and identification check through the City's Police Department upon Franchisee and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause provided that Franchisee does not waive the privacy rights, if any, of its employees.

7.4.6 Safety Training. Franchisee shall provide suitable operational and safety training for all its employees who use or operate vehicles or equipment for collection of Solid Waste or who are otherwise directly involved in such collection. Franchisee shall train its employees involved in Solid Waste and/or Recycling collection to identify, and not to collect, Hazardous Wastes. Franchisee and its employees shall comply with the terms of all contracts between the Los Angeles County Sanitation District and any Disposal Site that is used by Franchisee, including but not limited to any contracts between the Los Angeles County Sanitation District and Franchisee's MRF/TS.

7.4.7 Safety. All work performed pursuant to this Agreement shall be performed in a manner that provides safety to the public and meets or exceeds safety standards outlined by the California Construction Safety Orders under the State of California Code of Regulations ("CAL-OSHA"). City reserves the right to issue restraint or cease and desist orders to Franchisee when unsafe or harmful acts are observed or reported to City. Franchisee shall maintain its maintenance facility and yard, including the MRF/TS, free of hazards to persons and/or property. Franchisee shall instruct its employees to report immediately any hazardous conditions or Hazardous Wastes they observe within the City during the course of their work to the City.

7.4.8 No Gratuities. Franchisee shall not permit its employees or subcontractors to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the work performed by those employees or subcontractors pursuant to this Agreement.

ARTICLE VIII *FRANCHISEE'S COMPENSATION*

8.1 Maximum Rate Schedule. In the attached Exhibit A, which is incorporated herein by this reference ("Maximum Rate Schedule"), the City has established the maximum service rates which may be charged by Franchisee to its customers in the City. The Maximum Rate Schedule shall be in effect at the time of the Effective Date.

8.2 Payment of Residential Rates. Residential Customers shall not pay a fee directly to the Franchisee. The total amount due with respect to services to be provided to residential customers (the Maximum Rate for Residential Service times the number of residential

customers times twelve months) shall be deducted from the Host Fee due from the Franchisee or its affiliate with respect to the MRF/TS. Prior to the development and commencement of operations of the MRF/TS, the City shall pay Franchisee all sums due with respect to residential service.

8.3 Rates Set for Term of Agreement. The Maximum Rates established in this Article 8, as adjusted for changes in the Disposal Component and as adjusted for increases in CPI for the Operations Component and otherwise, as specified in Exhibit D, shall remain in place for the term of this Agreement excepting only changes in the Maximum Rates arising as provided at Section 6.1, above.

8.4 MRF/TS Gate Fee. The MRF/TS shall accept delivery and process all Solid Waste, Green Waste, and Recyclables collected hereunder at the lowest Gate Fee offered to any other City or private company for similar mixed solid waste processing. The Gate Fee shall be divided into two components, a Disposal Component and an Operations Component. The Disposal Component of the Gate Fee shall be adjusted periodically to reflect the actual cost of transportation and disposal of residue from the MRF/TS. The Operations Component of the Gate Fee for the MRF/TS shall be adjusted annually by the Cost of Living. Beyond the Cost of Living adjustment for the Operations Component of the Gate Fee for the MRF/TS, the Gate Fee for the MRF/TS shall only be changed as provided under Section 6.1, above, governing increased costs arising from increased governmental mandates. The establishment of the Gate Fee at the MRF/TS shall be in accordance with the Facility Operations Agreement. Rate adjustments shall be implemented in accordance with the Rate Adjustment Exhibit, attached hereto as Exhibit D.

8.5 Total Compensation. Franchisee shall not receive any other fees or compensation for the services to be performed pursuant to this Agreement in excess of those provided in the Maximum Rate Schedule except as may be specifically allowed hereunder.

8.6 Billing. All Commercial Unit accounts shall be directly billed by Franchisee. Billing and collection for service may be done on a monthly basis in advance of service, providing the due date of said bill is not more than sixty-five (65) days prior to the end of the billing cycle where service is being provided. Franchisee shall refund any portion of charges for service which is not provided with ten (10) days of cancellation of service.

8.7 Applicability of Proposition 218. The parties agree that the rates to be charged by Franchisee are set by Franchisee as a private contractor in the market place. The City's role with respect to rate setting for Commercial Units is to establish rate ceilings for the protection of City's businesses given the exclusive status afforded to Franchisee by this Agreement and given the nature of the services it is to provide. Accordingly, the parties agree that this Agreement shall be construed to maintain the status of the rates Franchisee chooses to charge to Commercial Units within the City as privately established rates and not as property related fees within the scope of Article XIII D of the California Constitution or taxes within the scope of Articles XIII A and XIII C of the California Constitution. City is contracting directly with Franchisee for services to its single family residences and such services are provided at no cost by the City for its residents. The amount that City pays Franchisee for providing such services is not a property related fee or any fee at all with respect to the City's residents.

8.8 **City Right to Hold Proposition 218 Hearing.** At the City's election, and without admitting the applicability of Proposition 218 to this Agreement, the City may conduct the hearings and other procedures which would have application if the Agreement was deemed to be subject to Proposition 218 prior to the execution of this Agreement by the City and provided further that this Agreement shall, at the election of Franchisee, not be binding on Franchisee in the event that the City elects to follow Proposition 218 procedures and the rates and terms set forth in this Agreement are not finally approved by the City. Notwithstanding the foregoing and the parties' intention in having Franchisee as a private contractor pursuant to this Agreement, should there be any successful Proposition 218 challenge, the parties shall each be financially responsible for their respective share of any such challenged rate increase.

8.9 **No Business License Required.** Notwithstanding any other provision of the City's Municipal Code to the contrary, Franchisee shall not be required to possess any business license issued by the City, nor shall it be required to pay any license tax collected by the City, in order to perform the services required hereunder.

8.10 **Delinquent Accounts.**

8.10.1 **Commercial Unit Accounts.** City may permit Franchisee to discontinue service to Commercial Units whose accounts are more than ninety (90) days past due. Franchisee shall be entitled to collect late charges at the rate of 1.5% per month and, in addition, to charge a reasonable rate for the redelivery of Franchisee Provided Containers.

8.10.2 **No Waiver of City Remedies to Address Public Nuisance.** Should Franchisee terminate service to any customer in the City, nothing herein waives or supersedes the City's rights to initiate code enforcement action(s) in response to the build-up, long-term stagnation, or misplacement of Solid Waste as a result of said termination of Franchisee's service. In addition, the City and Franchisee shall, at the option of either party, meet and confer in good faith to resolve any matters of public nuisance or Solid Waste build-up that resulted from a termination of service by Franchisee.

ARTICLE IX
ACCOUNTING AND RECORDS.

9.1 **Inspection of Franchisee's Accounts and Records.** Franchisee's records of customer complaints, AB 939 compliance records, maps, billing records, gross income, franchise fee payments, diversion, tons collected, and customer payment histories shall be available at the Franchisee's local office as set forth in Section 5.2.1 at any time during regular business hours for inspection on twenty-four (24) hours notice, and/or performance of financial review of Franchisee's records by the City or its duly authorized representative in accordance with the Agreed Upon Procedures (as defined in Article I herein), for a period of five (5) years following the close of the Franchisee's fiscal year. Franchisee shall provide City with a copy of any requested record at no cost to City.

9.2 **Cost of Agreed Upon Procedures.** The City may annually perform an Agreed Upon Procedure of Franchisee's books and records, or otherwise upon Franchisee's request for an increase in rates under the Maximum Rate Schedule. Should the City's

performance of Agreed Upon Procedures disclose that the Franchise Fee or Recycling Fee payable by the Franchisee was underpaid by three percent (3%) or more, or that customers were overcharged by three percent (3%) or more, for the period under review, Franchisee shall pay for the cost of City's performing the Agreed Upon Procedures in addition to the reimbursing the City for the underpayment and/or refunded the Customers for their overpayment.

9.3 Payments and Refunds. Should the performance of an Agreed Upon Procedure by the City disclose that the Franchise Fee or Recycling Fee payable by the Franchisee was underpaid or that customers were overcharged for the period under review, Franchisee shall pay to City any underpayments of the Franchise Fee or Recycling Fee and/or refund to Franchisee's customers any overcharges. Should the performance of an Agreed Upon Procedure by the City disclose that Franchise Fee or Recycling Fee were overpaid, City shall promptly refund to Franchisee the amount of the overpayment.

ARTICLE X ENFORCEMENT OF AGREEMENT.

10.1 City Right to Seek Termination. The City's right to seek termination of this Agreement based on Franchisee's material default shall be in addition to any other remedy provided in this Agreement or provided by law and shall include, but not be limited to, any of the events of default set forth in this Article X. In addition, specific events of default by Franchisee include, without limitation, the following:

(a) If Franchisee practices, or attempts to practice, any fraud or attempted fraud upon the City.

(b) Should the Franchisee or any of its officers, directors, shareholders, subsidiaries, affiliates, employees or agents be or have been, in connection with the performance of this Agreement, found guilty of felonious conduct, illegal transport or disposal of Hazardous Waste, or bribery of public officials, the City reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. The term "found guilty" shall be deemed to include any judicial determination of guilt including, but not limited to, pleas of "guilty", "nole contendere", "no contest" or "guilty to a lesser charge" entered as part of a plea bargain.

(c) If Franchisee fails to provide or maintain in full force and effect the workers' compensation or any other insurance coverage or performance bond required by this Agreement.

(d) If Franchisee willfully violates any orders or rulings of any regulatory body having jurisdiction over Franchisee pertaining to Franchisee's performance of this Agreement, provided that Franchisee may reasonably 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.

(e) If Franchisee fails to make any payments or to pay any penalties required to be made or paid by Franchisee pursuant to this Agreement.

(f) If Franchisee for any reason ceases to provide Solid Waste and/or Recycling management services as required under this Agreement over all or a substantial portion of its franchise area for a period of thirty (30) days.

(g) If Franchisee, in its performance hereunder, violates the terms, conditions or requirements of the Irwindale Municipal Code or AB 939 or successor legislation, as they may be amended from time to time, or violates any order, directive, rule or regulation issued pursuant to the foregoing legislation, where the violation is not remedied within the time set in the written notice of the violation.

(h) If Franchisee refuses to provide City with required information, reports or test results in a timely manner as required by this Agreement.

(i) If Franchisee becomes insolvent, unable or unwilling to pay its debts, or upon the appointment of a receiver to take possession of all or substantially all of the assets of Franchisee, or upon a general assignment by Franchisee for the benefit of creditors, or upon any action taken by or suffered by Franchisee under any insolvency or bankruptcy act.

(j) If Franchisee fails to meet the Waste Diversion requirements of this Agreement or AB 939 (Section 6.3 hereof).

(k) If Franchisee should substantially, persistently and repeatedly refuse or should fail to supply enough properly skilled workers or proper materials or equipment for the collection and disposal of Solid Waste from City in a good and workmanlike manner, or fail to make prompt payment for materials, equipment or labor, or fail to make any payment to City when due, or persistently disregard laws, ordinances, or the instructions of City or its duly authorized representatives, or otherwise to be in substantial violation of any provision of the Agreement.

(l) If Franchisee should persistently and repeatedly fail to perform its services hereunder in a professional and workmanlike manner as required by the performance standards set forth herein, or if Franchisee's conduct of its services under this Agreement should result in a recurrent or persistent condition of public nuisance or threat to public health and safety.

(m) If Franchisee fails to make reasonable efforts to process, market and sell Recyclables.

(n) If Franchisee breaches the MRF/TS MOU or the MRF/TS Agreements that may supersede the MRF/TS MOU and fails to cure such breach within the time allowed by the applicable agreement.

10.2 Rights of Nondefaulting Party after Default. The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a default or to enforce any covenant or agreement herein. Before this Agreement may be terminated or action may be taken to obtain judicial relief the Party seeking relief for a default ("Nondefaulting Party") shall comply with the notice and cure provisions below.

10.3 Notice of Default and Opportunity to Cure. A Nondefaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("Defaulting Party") in its performance of a material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Nondefaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure ("Default Notice"). The Defaulting Party shall be deemed in "default" under this Agreement, where: (i) said breach or failure can be cured, but the Defaulting Party has failed to fully cure within thirty (30) days after the date of the Default Notice (subject to the provisions below), or (ii) a monetary default remains uncured for ten (10) days (or such lesser time as may be specifically provided in this Agreement).

10.4 Non-Monetary Defaults; Longer Cure Period. The Defaulting Party on a non-monetary default shall not be deemed in breach of this Agreement, and such default shall be waived, if such non-monetary default cannot reasonably be cured within the above-prescribed thirty-day period, and as long as the Defaulting Party does each of the following:

(a) Notifies the Nondefaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

(b) Notifies the Nondefaulting Party of the Defaulting Party's proposed cause of action to cure the default;

(c) Promptly commences to cure the default within the thirty (30) day period;

(d) Makes periodic reports to the Nondefaulting Party as to the progress of the program of cure; and

(e) Diligently prosecutes such cure to completion.

10.5 Termination Upon Default. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Nondefaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and other Agreements ("Termination Notice"). The Termination Notice shall state that the Nondefaulting Party will elect to terminate this Haul Agreement and will describe the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Nondefaulting Party's election to terminate Agreements will only be waived if (i) the Defaulting Party fully and completely cures all defaults prior to the date of termination.

10.6 Franchisee Hearing Opportunity Prior to Termination. If Franchisee is the Defaulting Party, then the City's Termination Notice to Franchisee shall additionally specify that Franchisee has the right to a hearing prior to the City's termination of any Agreements ("Termination Hearing"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act,

Government Code Sections 54950-54963. At said Termination Hearing, Franchisee shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the Council may, by adopted resolution, act as follows:

- (a) Decide to terminate this Agreement; or
- (b) Determine that Franchisee is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or
- (c) Impose conditions on a finding of default and a time for cure, such that Franchisee's fulfillment of said conditions will waive or cure any default.

Findings of a default or a conditional default must be based upon substantial evidence supporting the following two findings: (i) that a default in fact occurred and has continued to exist without timely cure, and (ii) that such default has, or will, cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, the environment, the City or the financial terms established in this Agreement.

10.7 Interest on Monetary Default. In the event Franchisee fails to perform any monetary obligation under this Agreement, Franchisee shall pay interest thereon at the rate of ten percent (10%) per annum from and after the due date of said monetary obligation until payment is actually received by City.

10.8 City's Right to Perform Service.

10.8.1 City Rights. In addition to any and all other legal or equitable remedies, in the event that Franchisee, for any reason whatsoever, fails, refuses or is unable to collect, transport or deliver to the MRF/TS or a Disposal Site, as appropriate, any or all Solid Waste or Recyclables which it is required by this Agreement to collect and transport, at the time and in the manner provided in this Agreement, for a period of more than five (5) days, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City Manager in his or her sole discretion should find that such accumulation endangers or menaces the public health, safety or welfare, then the City Manager shall have the right, but not the obligation, without payment to Franchisee, to (i) cause to be performed, such services itself with its own personnel or employ Franchisee's personnel, without liability to Franchisee; and/or (ii) to take possession of any or all of Franchisee's equipment and other property used or useful in the collection and transportation of Solid Waste and to use such property at the expense of Franchisee to collect and transport any Solid Waste which Franchisee would otherwise be obligated to collect and transport pursuant to this Agreement.

10.8.2 Franchisee and City Responsibilities. Franchisee further agrees that in such event:

- (a) It will fully cooperate with City to effect the transfer of possession or property to the City for City's use;

(b) It will, if City Manager so requests, and to the extent feasible, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition; and

(c) The City agrees to assume complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

10.8.3 Franchise Waivers. Franchisee agrees that the City's exercise of its rights under this Article 10:

(a) Does not constitute a taking of private property for which compensation must be paid, but is rather an exercise of the City's police power;

(b) Will not create any liability on the part of City to Franchisee, including but not limited to, any right to compensation for use of Franchisee's equipment;

(c) Does not exempt Franchisee from the indemnity provisions of Article 10, which are meant to extend to circumstances arising under this Section 10.8, provided that Franchisee is not required to indemnify City against claims and damages arising from the sole negligence of City, its officers, employees, agents, or volunteers acting under this Section 10.8; and

(d) Does not terminate this Agreement, unless termination occurs under other provisions of this Agreement.

10.9 Duration of City's Possession. City has no obligation to maintain possession of Franchisee's property and/or continue its use in collecting and transporting Solid Waste for any period of time and may, at any time, in its sole discretion, relinquish possession to the Franchisee. Should the City desire to retain possession of Franchisee's property, the City's right to retain temporary possession, and to provide Solid Waste collection services, shall continue until Franchisee can demonstrate to the City Manager's reasonable satisfaction that it is ready, willing and able to resume such services.

10.10 Forfeiture of Performance Bond. In the event Franchisee shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare that portion of the performance bond established pursuant to Section 12.3 which is necessary to recompense and make whole the City, forfeited to the City. Upon partial forfeiture of the performance bond, Franchisee shall promptly take all steps necessary to restore the performance bond to its face amount.

10.11 City's Right to Lease Franchisee's Equipment Following Termination. If City terminates this Agreement for cause, the City shall have the right to lease Franchisee's equipment from Franchisee at its fair market value for a period not to exceed six (6) months in order to allow City to perform the services required under this Agreement.

10.12 Cooperation Following Termination. At the end of the Term or Franchise Term or in the event this Agreement is terminated for cause prior to the end of the Term or Franchise Term, Franchisee shall cooperate fully with City and any subsequent contractor to assure a smooth transition of Solid Waste management services. Franchisee's cooperation shall include, but not be limited to, providing operating records needed to service all properties covered by this Agreement. Additionally, Franchisee acknowledges that it is familiar with Article 3 of Chapter 4 of Part 8 of Division 30 of the Public Resources Code, commencing with Section 49520, and that such provisions are inapplicable to Franchisee in this Agreement. Franchisee further agrees that if and to the extent that such provisions are deemed applicable to this Agreement, Contractor waives any rights they may afford.

10.13 Remedies for Nuisance Violations.

10.13.1 Liquidated Damages. The provision of poor public service or the production of any nuisance condition will subject Franchisee to administrative procedures, potential liquidated damages and, ultimately, termination, for severe and repeated violations.

10.13.2 Complaints. Public complaints (whether received by the City regarding Franchisee's performance or received directly by Franchisee) will be handled as prescribed in Sections 5.2.3 and 5.2.4 hereof.

10.13.3 Nuisance Conditions. Repeated, substantiated complaints of, or continued conditions of, poor service quality and/or nuisance conditions may be handled in the manner prescribed below. For purposes of this Section, the term "nuisance conditions" shall include, but is not limited to, the following:

(a) Failure to duly collect Solid Waste and/or Recyclables that have been properly set-out for collection through the willful or negligent conduct of Franchisee employees;

(b) Uncured damage to the property of third parties or customers through the willful or negligent conduct of Franchisee employees;

(c) Legitimate complaints of rude or unprofessional behavior or conduct by Franchisee's employees in the course of their duties;

(d) Failure to perform service surveys and route audits as required by Sections 5.2.8 and 5.2.9, respectively, hereof;

(e) Unreasonable leakage or spillage of Solid Waste or other collected materials from Franchisee's vehicles;

(f) Failure to immediately or promptly collect Solid Waste or other materials that spilled or fell from Franchisee's vehicles onto public streets or third-party property;

(g) Poor maintenance of Franchisee's vehicles, containers and equipment in violation of Sections 7.1 through 7.3 hereof;

(h) Violations of personnel standards and qualifications in contravention of Section 7.4 hereof.

(i) Any other failure to meet performance standards in such a manner as to give rise to a condition of public nuisance or threat to public health and safety.

10.13.4 Notice of Violation. Initially, when the City Manager or a designated enforcement officer observes a violation, a verbal warning shall be given to the Franchisee. If the violation is thereafter repeated and, in the opinion of the City Manager or designated enforcement officer, Franchisee has not taken timely, effective action to correct the violation and prevent its repetition, then the City Manager or designated enforcement officer may issue a written notice of violation (the "Notice of Violation") describing the violation, the period in which Franchisee is required to cure the violation (if such violation is curable) and a warning that continued violations can be subject to liquidated damages.

10.13.5 Franchisee's Right To Contest. Within five (5) business days after receiving the Notice of Violation, Franchisee may submit a written response (the "Response") to the Notice of Violation to the City Manager. The City Manager shall review Franchisee's Response and may further investigate the claimed violation. The City Manager shall make a final determination regarding the Notice of Violation and the City Manager shall deliver to Franchisee a written conclusion concerning the Notice of Violation. Additionally, at the election of either Party, the Parties may meet to develop a written corrective action plan ("Correction Plan") to prevent further occurrence of the problematic conditions established in the Notice of Violation. The Correction Plan shall be finally prepared by the City (or, at the election of the City, by Franchisee) within ten (10) business days after the meeting between the City Manager (or designee) and Franchisee. The Correction Plan may include additional procedures, as deemed necessary by the City Manager, to assure that in the future Franchisee will be able to perform its services in compliance with this Agreement.

10.13.6 Liquidated Damages. If a second Notice of Violation is issued for any violation *after* an initial verbal warning and thereafter the issuance of a written Notice of Violation that is not withdrawn pursuant to Subsections 10.12.4 or 10.12.5 above, then liquidated damages may thereafter be assessed against Franchisee (as liquidated damages and not a penalty) by the City Manager in the amount of \$250 for every day the condition persists. Further, if the violation for which liquidated damages were assessed recurs on three (3) or more days within a 60-day period following any assessment of liquidated damages, then starting on the fourth (4th) day that such violation either persists or recurs the amount of liquidated damages shall increase to \$500 per day.

10.13.7 Basis for Liquidated Damages. The Parties further recognize that if Franchisee recurrently fails to prevent and remediate nuisance conditions, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City and its citizens will suffer. Therefore, the Parties agree that the liquidated damages established herein represent a reasonable estimate of the amount of such damages for such specific violations, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of

actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of these liquidated damage provisions prior to entering this Agreement.

Franchisee's Initials _____ City Initials _____

10.13.8 Further Remedies For Severe Or Persistent Violations. The above provisions for a Correction Plan procedure and liquidated damages are intended to give the Parties a remedy under this Agreement short of termination or default; however, should Franchisee's violations be severe and repetitive or otherwise not reasonably subject to correction through liquidated damages, the Planning Director may, in his sole discretion, institute the procedures set forth in this Article hereof.

10.14 No Waiver Of City's Police Powers Or Legal Rights. Nothing in this Agreement is intended to limit the power and ability of the City or any LEA to initiate administrative and/or judicial proceedings for the abatement of nuisance conditions or violations of any applicable law. Nothing herein shall waive or limit any other legal rights or recourses the City may have in response to Franchisee's repeated, material violations of Performance Standards or failure to mitigate nuisance conditions.

ARTICLE XI *TRANSFERS OF INTEREST.*

11.1 Restrictions on Transfers. The City, in entering into this Agreement, has placed a special value, faith and confidence in the experience, background, and expertise of the Franchisee in the field of waste disposal. Such faith and confidence being a substantial consideration in the granting of this Agreement warrants the transfer restrictions provided in this Article XI.

11.2 Definition of Transfer. As used in this Section, the term "Transfer" shall include any hypothecation, mortgage, pledge, or encumbrance of this Agreement by Franchisee, subject to the exceptions set forth in Section 11.4 below. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than thirty percent (30%) of the present equity ownership and/or more than thirty percent (30%) of the voting control of Franchisee (jointly and severally referred to herein as the "Trigger Percentages"), taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest to an affiliate owned or controlled by the present beneficial owners of Franchisee or members of their immediate family, or between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family. Immediate family includes relatives within three degrees of consanguinity (including, without limitation, parent, child, grand parent, grand child, uncle, aunt, first cousin, nephew, niece) and their spouses. A transfer of interests (on a cumulative basis) in the equity ownership and/or voting control of Franchisee in amounts less than Trigger Percentages shall not constitute a Transfer subject to the restrictions set forth herein. In the event Franchisee or its successor is a corporation or trust, such Transfer shall refer to the transfer of the issued and outstanding capital stock of Franchisee, or of beneficial interests of such trust; in the

event that Franchisee or any general partner comprising Franchisee is a limited or general partnership or a limited liability company, such Transfer shall refer to the transfer of more than the Trigger Percentages in the limited or general partnership or limited liability company interest; in the event that Franchisee or any general partner is a joint venture, such Transfer shall refer to the transfer of more than the Trigger Percentages of such joint venture partner, taking all transfers into account on a cumulative basis.

11.3 Transfers Require City Approval. Franchisee shall not Transfer this Agreement or any of Franchisee's rights hereunder, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, and if so purported to be transferred, the same shall be null and void. Franchisee will submit its request for City consent to the City together with documents, including but not limited to: (i) the transferee's audited financial statements for at least the immediately preceding three (3) operating years; (ii) proof that the proposed transferee has municipal solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Franchisee; (iii) proof that in the last five (5) years, the proposed transferee has not suffered any citations or other censure from any federal, state, or local agency having jurisdiction over its waste management operations due to any significant failure to comply with federal, state, or local waste management law and that the transferee has provided the City with a complete list of such citations and censures; (iv) proof that the proposed transferee has at all times conducted its operations in an environmentally safe and conscientious fashion; (v) proof that the proposed transferee conducts its municipal solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state, and local laws regulating the collection and disposal of waste, including hazardous waste; (v) proof that the transferee's officers or directors have no criminal convictions for fraud, deceit, false claims or racketeering with respect to the transferee's course of business; and (vi) any other information required by the City to ensure the proposed transferee can fulfill the terms of this Agreement, including the payment of indemnities and damages and provision of bonds and/or performance standards, in a timely, safe, and effective manner.

11.4 Exceptions. The requirement to obtain City approval for a Transfer shall not apply to any of the following:

(a) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing and any resulting foreclosure therefrom.

(b) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(c) A sale or transfer to an affiliate of Franchisee owned or controlled by the present beneficial owners of Franchisee or members of their immediate family, or between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family.

11.5 Assumption of Obligations. No attempted Transfer of any of Franchisee's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form approved by the City assuming such obligations. Following any such assignment or Transfer of any of the rights and interests of Franchisee under this Agreement, the exercise, use and enjoyment shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Franchisee.

11.6 Release of Franchisee. City's consent to a Transfer shall not be deemed to release Franchisee of liability for performance under this Agreement unless such release is specific and in writing executed by City, which release shall not be unreasonably withheld. Upon the written consent of City to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Franchisee under this Agreement by the assignee, Franchisee shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Franchisee is in default under the terms of this Agreement prior to said Transfer.

11.7 Franchisee to Pay Transfer Costs. Franchisee will pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed transferee or assignee, and to review and finalize any documentation required as a condition for approving any such Transfer.

11.8 Subcontracting. This Agreement, or any portion thereof, shall not be subcontracted except with the prior written consent of the City, which consent shall not be unreasonably withheld. No such consent shall be construed as making the City a Party to such subcontract, or subject the City to liability of any kind to any subcontractor. Franchisee shall submit all subcontracts for review and approval by the City and any permitted subcontract shall terminate on or before the termination of this Agreement. All subcontractors shall be licensed as required under State, Federal and local laws and regulations to perform their subcontracted work and obtain and maintain a City business license if required. Franchisee shall remain otherwise liable for the full and complete performance of its obligations hereunder.

11.9 Heirs and Successors. The terms, covenants and conditions of this Agreement shall apply to and shall bind the heirs, successors, executors, administrators and assigns of the Franchisee and City.

ARTICLE XII

INSURANCE, INDEMNITY AND PERFORMANCE BOND.

12.1 Insurance. Franchisee shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the policies of insurance contained in Exhibit B hereto.

12.2 Indemnification. Without regard to the limits of any insurance coverage, Franchisee agrees to indemnify, defend with counsel appointed by the City, protect and hold harmless the City, its representatives, officers, agents and employees against any and all fines, response costs, assessments, actions, suits, injunctive relief, claims, damages to persons or property, losses, costs penalties, obligations, errors, omissions or liabilities, ("claims or

liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with (i) violations of the commerce clause of the U.S. Constitution, AB 939, the Comprehensive Environmental Response, Compensation and Liability Act, Title 42 U.S.C. §9601 *et seq.* ("CERCLA"), HSWA, RCRA, any other Hazardous Waste laws, or other federal, state or local environmental statutes, ordinances and regulations which arise from this Agreement; (ii) the negligent performance of the work or services of Franchisee, its agents, employees, subcontractors, or invitees, provided for in this Agreement; (iii) the negligent acts or omissions of Franchisee hereunder, or arising from Franchisee's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence on the part of the City, its representatives, officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its representatives, officers, agents or employees, who are directly responsible to the City, and in connection therewith:

(a) Franchisee will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Franchisee will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work or services of Franchisee hereunder; and Franchisee agrees to save and hold the City, its officers, agents and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Franchisee for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work or services of Franchisee hereunder, Franchisee agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Franchisee's obligations hereunder shall survive the termination or expiration of this Agreement

12.3 Performance Bond. Within thirty (30) days after the Effective Date of this Agreement, Franchisee shall deposit and maintain One Hundred Thousand Dollars (\$100,000) with the City to be adjusted annually upon direction from the City based upon any changes in the CPI, in lieu of a performance bond in favor of the City. This \$100,000 deposit shall be additional to the Ten Thousand Dollar performance deposit that Franchisee already deposited to the City in connection with the 2000 Franchise Agreement (making a total of \$110,000 on deposit with the City for purposes of securing Franchisee's performance of this Agreement). Said deposits shall be deemed to continue security of Franchisee's faithful performance of waste hauling services under the auspices of this Agreement, including without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement. The deposit shall be unconditional and remain in force during the entire term of this Agreement and shall be released only if the Franchisee promptly and faithfully performs all terms and conditions of this

Agreement. At the option of Franchisee, Franchisee may deposit a bond that is reasonably acceptable to the City in the face amount of \$110,000 in the place and stead of the cash deposit. In such event, Franchisee shall cause said bond to remain in full force and effect for the entire term of this Agreement.

12.4 AB 939 Guarantee and Indemnification. Without in any way limiting the indemnification provisions in Section 12.2 above, Franchisee unconditionally guarantees compliance with the requirements AB 939 as amended from time to time. Franchisee shall carry out its obligations under this Agreement so that the City will meet or exceed the diversion requirements set forth in AB 939, and all amendments thereto, as more fully set forth below. City and Franchisee shall reasonably assist each other to meet the City's AB 939 diversion requirements. In carrying out the provisions of this Section, Franchisee agrees to perform the following obligations at its cost and expense:

(a) Defend, with counsel approved by City, indemnify and hold harmless the City against all fines and/or penalties imposed by CalRecycle, if Franchisee fails or refuses to provide information relating to its operations which is required under this Agreement and such failure or refusal prevents or delays City from submitting reports required by AB 939 in a timely manner;

(b) Assist City in preparing for, and participating in, CalRecycle's biannual review of the City's source reduction and recycling element pursuant to Public Resources Code Section 41825;

(c) Assist City in responding to inquires from CalRecycle in applying for an extension under Public Resources Code Section 41820, if so directed by City; in conducting any hearing conducted by CalRecycle relating to AB 939; or in any other investigative or enforcement manner undertaken by any agency;

(d) Defend, with counsel acceptable to City, and Indemnify and hold harmless the City against any fines or penalties levied against it for violation of AB 939's diversion requirements, excepting any fine or penalty imposed if City's failure to meet the Act's diversion requirements is the result of an order.

(e) In cooperating with the City, should it seek to become its own enforcement agency, to the extent it may be permitted under state law.

12.5 AB 939 Education. Franchisee and City shall jointly develop and implement a public awareness and education program that is consistent with the City's Source Reduction and Recycling goals as stated in Article 6.

ARTICLE XIII GENERAL PROVISIONS.

13.1 Force Majeure. The time period(s) specified for performance of the provisions of this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Franchisee, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires,

earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Franchisee shall within ten (10) days of the commencement of such delay notify the City Manager in writing of the causes of the delay; no extension of time for performance shall be granted, however, by reason of the unavailability of any Disposal Site (except in the event that there are no available disposal sites accepting waste within a reasonable distance of the City), labor disturbances beyond the control of Franchisee, or breakage or accidents to vehicles, equipment, machinery or plants provided that such breakage or damage is not the result of a regional emergency or natural disaster. The City Manager shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the City Manager such delay is justified. In no event shall Franchisee be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Franchisee's sole remedy being extension of the time to perform the impacted service under this Agreement pursuant to this Section 13.1.

13.2 Notices. All notices, demands, requests, approvals, disapprovals, proposals, consents, or other communications whatsoever which this Agreement contemplates or authorizes, or requires or permits either Party to give to the other, shall be in writing and shall be personally delivered, sent by telecopier or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective Party as follows:

If to Franchisee: Arakelian Enterprises, Inc., dba Athens Services
P.O. Box 60009
City of Industry, CA 91716
Attn: Dennis M. Chiappetta

With a copy to: Archer Norris
2033 N. Main Street, Ste. 800
Walnut Creek, CA 94596
Attn: Richard Norris

If to City: City Manager
City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91760

With copy to: Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 400
Irvine, CA 92612
Attention: Fred Galante, City Attorney

or to such other address as either Party may from time to time designate by notice to the other given in accordance with this Section 13.2. Notice shall be deemed effective on the date personally served or by facsimile or, if mailed, three (3) days from the date such notice is deposited in the United States mail.

13.3 Non-discrimination. Franchisee covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, sexual orientation, or ancestry in the performance of this Agreement. Franchisee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation, national origin or ancestry.

13.4 Compliance with Immigration Laws. Franchisee agrees that, in the performance of this Agreement, it will comply with all applicable immigration laws and regulations.

13.5 No Liability of City Officials. No officer, employee or agent of the City shall be personally liable to the Franchisee, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Franchisee or to its successor, or for breach of any obligation of the terms of this Agreement.

13.6 Laws and Regulations. Franchisee shall observe all the terms of any City ordinance or resolution now in effect, or as the same may be subsequently adopted or amended by the City, governing or affecting the collection, removal and disposal of Municipal Solid Waste in the City of Irwindale. Franchisee further agrees to comply with all applicable county, state or federal laws or regulations as they exist now or may subsequently be adopted or amended, governing the collection, removal and disposal of Municipal Solid Waste. Franchisee further agrees to comply with all applicable state and federal laws governing employment, wages, working conditions, use of materials, equipment, supplies and the like.

13.7 Proprietary Information: Public Records. The City acknowledges that a number of the records and reports of the Franchisee are proprietary and confidential. Franchisee is obligated to permit City inspection of certain of its records, as provided herein, on demand and to provide copies to City where requested. City will endeavor to maintain the confidentiality of all proprietary information provided by Franchisee and shall not voluntarily disclose such proprietary information. Notwithstanding the foregoing, any documents provided by Franchisee to City that are public records may be disclosed pursuant to a proper public records request.

13.8 Waiver of Future Claims. No delay or omission in the exercise of any right or remedy by a Non-Defaulting Party on any default shall impair such right or remedy or be construed as a waiver. A Party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

13.9 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Franchisee warrants that

it has not paid or given and will not payor give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement.

13.10 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

13.11 Integration: Amendment. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. This Agreement may only be amended at any time by the mutual consent of the Parties by an instrument in writing. This Agreement is intended, in part, to carry out City's obligations to comply with the provisions of AB 939 and regulations promulgated thereunder, as amended from time to time. In the event that AB 939 or other state or federal laws or regulations enacted after this Agreement prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. No other amendment of this Agreement shall be valid unless in writing duly executed by the Parties.

13.12 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

13.13 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend or is made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys, fees and expert witness fees.

13.14 No Joint Venture. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Franchisee, its agents or employees, perform the services required herein, except as otherwise set forth. Franchisee shall perform all services required herein independent from the City and shall remain at all times as to City a wholly independent entity with only such obligations as are consistent with that role. Franchisee shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Franchisee in its business or otherwise or a joint venturer or a member of any joint enterprise with Franchisee.

13.15 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either Party of one or more of such rights or remedies

shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

13.16 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13.17 Jurisdiction and Venue. The parties hereto agree that the State of California is the proper jurisdiction for litigation of any matters relating to this Agreement. The Parties further agree that Los Angeles County, California is the proper place for venue as to any such litigation arising out of the Agreement and Franchisee agrees to submit to the personal jurisdiction of such court in the event of such litigation.

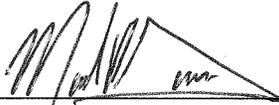
13.18 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

13.19 Street Sweeping. The City and Franchisee entered into an Agreement for Interim Street Sweeping Services dated August 26, 2009 (the "Interim Street Sweeping Agreement"), a copy of which is on file with the City Clerk of the City. The parties agree that the term of the Interim Street Sweeping Agreement shall be and is hereby extended to conform to the Term of this Agreement; provided that Franchisee will not charge separately for Street Sweeping Services provided to City for the term of this Agreement. All of the other terms and conditions of the Interim Street Sweeping Agreement shall remain in full force and effect throughout the Term of this Agreement.

IN WITNESS WHEREOF, the Parties hereto do hereby set their hands and seals as of the day and the year first written above.

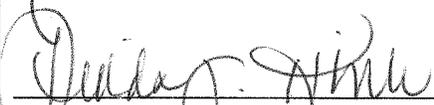
CITY OF IRWINDALE

By:



Manuel R. Garcia, Mayor

ATTEST:



Linda J. Kimbro, MMC
Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP



Fred Galante, City Attorney

FRANCHISEE

Arakelian Enterprises, Inc., dba Athens Services



By: Ron Arakelian, Jr., Chairman



By: Michael Arakelian, Secretary

EXHIBIT "A"

MAXIMUM RATE SCHEDULE

Schedule of Rates Effective month, day, year

Residential Barrels	Net	AB939	FF	Gross
2 90 Gallon Barrels	20.05	1.19	3.75	24.99
1 Extra 90 Gallon Barrel	10.03	0.60	1.87	12.50

Bin	Frequency	Disposal	Service	Net	AB939	FF	Gross
1.5	1	12.42	83.84	96.27	5.74	18.00	120.01
1.5	2	24.85	126.33	151.18	9.01	28.27	188.46
1.5	3	37.27	165.46	202.74	12.08	37.91	252.73
1.5	4	49.70	199.75	249.45	14.86	46.64	310.96
1.5	5	62.12	253.77	315.90	18.82	59.07	393.79
1.5	6	74.55	316.49	391.04	23.30	73.12	487.46

Bin	Frequency	Disposal	Service	Net	AB939	FF	Gross
2	1	16.57	97.96	114.52	6.82	21.41	142.76
2	2	33.13	144.16	177.30	10.56	33.15	221.01
2	3	49.70	188.75	238.45	14.21	44.59	297.24
2	4	66.27	238.96	305.23	18.19	57.07	380.49
2	5	82.83	277.85	360.68	21.49	67.44	449.61
2	6	99.40	344.07	443.47	26.42	82.92	552.82

Bin	Frequency	Disposal	Service	Net	AB939	FF	Gross
3	1	24.85	100.64	125.49	7.48	23.46	156.43
3	2	49.70	153.94	203.64	12.13	38.08	253.85

3	3	74.55	195.80	270.35	16.11	50.55	337.01
3	4	99.40	244.46	343.86	20.49	64.30	428.65
3	5	124.25	294.85	419.10	24.97	78.37	522.44
3	6	149.10	355.65	504.75	30.08	94.38	629.20

Bin	Frequency	Disposal	Service	Net	AB939	FF	Gross
4	1	33.13	122.89	156.02	9.30	29.17	194.49
4	2	66.27	176.81	243.08	14.48	45.45	303.01
4	3	99.40	226.36	325.76	19.41	60.91	406.08
4	4	132.53	273.11	405.65	24.17	75.85	505.67
4	5	165.67	329.31	494.97	29.49	92.55	617.02
4	6	198.80	398.24	597.04	35.58	111.64	744.25

Bin	Frequency	Disposal	Service	Net	AB939	FF	Gross
6	1	49.70	146.93	196.63	11.72	36.77	245.11
6	2	99.40	206.97	306.37	18.26	57.29	381.91
6	3	149.10	256.01	405.11	24.14	75.75	504.99
6	4	198.80	325.15	523.94	31.22	97.97	653.13
6	5	248.50	385.78	634.28	37.79	118.60	790.67
6	6	298.20	463.91	762.11	45.41	142.50	950.03

Roll-off	Net	AB939	FF	Gross
Standard Roll-off Plus Dump	181.07	10.79	33.86	225.72
Compactor Roll-off Plus Dump	201.07	11.98	37.60	250.65
Wash Out	185.00	-	32.65	217.65

EXHIBIT "B"

INSURANCE PROVISIONS

Franchisee shall carry the following types and levels of insurance:

1. Comprehensive General Liability Insurance. Throughout the Term of this Agreement, Franchisee shall keep or cause to be kept in full force and effect, for the mutual benefit of City and Franchisee, comprehensive broad form general public liability insurance against claims and liability for personal injury, death or property damage arising from Franchisee's operations hereunder, said liability insurance shall be a minimum of Five Million Dollars (\$5,000,000). Such insurance shall be carried only in responsible insurance companies licensed to do business in the State of California. Franchisee shall pay all premiums therefore, without contribution by the City. All such policies shall contain language that: (i) the insurer waives the right of subrogation against City and against City's elected officials, officers, employees, agents, and representatives; (ii) the policies are primary and non-contributing with any insurance that may be carried by City; and (iii) they cannot be canceled or materially changed except upon forty-five (45) days' prior written notice by the insurer to City. In the event of any such cancellation or material change in such policy of insurance, then this Agreement shall terminate and be of no further force and effect. Franchisee agrees to furnish City copies of all such policies promptly upon receipt of them, or certificate evidencing the insurance. Franchisee further agrees that all such policies shall name City, its elected officials, officers, agents and employees as additional insureds. Franchisee may effect for its own account insurance not required under this Agreement.

2. Workers' Compensation Insurance. Franchisee shall, at Franchisee's sole cost and expense, maintain a policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Franchisee and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Franchisee in the course of carrying out the work or services contemplated in this Agreement. Franchisee shall furnish to City a copy of its workers' compensation policy or certificate evidencing such policy.

3. Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (i) bodily injury liability limits of \$1,000,000.00 per person and \$2,000,000.00 per occurrence and property damage liability limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate or (ii) combined single limit liability of \$2,000,000.00. Said policy shall include coverage for owned, non-owned, leased and hired cars.

4. Umbrella Insurance. Umbrella coverage to bring total aggregate insurance coverage for all underlying insurance coverage to TWENTY MILLION DOLLARS (\$20,000,000.00)

5. No Limitation. Franchisee agrees that the provisions of this Article 12 shall not be construed as limiting in any way the extent to which the Franchisee may be held responsible for the payment of damages to any persons or property resulting from the Franchisee's activities or the activities of any person or persons for which the Franchisee is otherwise responsible.

6. Rating. The insurance policies required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California rated A- or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class IV or better, unless such requirements are waived by the Risk Manager of the City.

7. Primary Insurance. The insurance policies shall be considered primary insurance as respects any other valid and collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it. The insurance policies shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company.

8. Changes in Market. In the event the Risk Manager determines that (i) the market conditions creates an increased or decreased risk of loss to City, (ii) greater insurance coverage is required due to the passage of time or (iii) changes in the insurance industry require different coverages be obtained, Franchisee agrees that the minimum limits of any insurance policy required to be obtained by Franchisee may be changed accordingly upon receipt of written notice from the Risk Manager at least ninety (90) days in advance of the imposition of the new requirements. In the event that any mandated change of coverage required under this Section 8 is materially more costly than the then existing coverage, as demonstrated by Franchisee to the satisfaction of City, City agrees to adjust the Maximum Rates as may be reasonably necessary to cover the marginal additional cost of meeting such insurance requirement.

EXHIBIT "C"

FRANCHISEE'S PLAN FOR PUBLIC EDUCATION AND OUTREACH, AND
COMMUNITY RELATIONS ACTIVITIES

1. Public Education Plan Objectives

The objectives of the public education program are the following:

- a) To maximize diversion and recycling tonnage by making the recycling program easily understood by residents.
- b) To educate the community via community meetings, and other civic organizations on the details of the program and services offered as well as source reduction and buying recycled content products.
- c) To convey strong anti-scavenging messages to protect the value of the resources to be collected.
- d) To encourage maximum participation.

2. Required Plan Components

The Contractor shall coordinate with City staff for a refined, well thought out public education plan that must do the following:

- a) Concentrate on how the new expanded recycling program complements the existing program.
- b) Utilize City's existing program recognition techniques in all new correspondence.
- c) Maintain communication in English, Spanish, and such other languages as the City may direct.

3. Public Education Materials

Contractor must provide the following to commercial customers:

- a) Advertisements publicizing Contractor's provision of waste audits for customers' serviced facilities.

- b) **Monthly billing inserts, and annual newsletter prepared and provided by the Contractor summarizing the past and upcoming year's program, events, and successes.**
- c) **Brochure prepared by the Contractor and reviewed by the City describing the recycling program, including service frequency and program changes**
- d) **Fliers prepared and provided by the City will be used on an as needed basis if Contractor's diversion estimates are not met or to further educate residents, reinforce recycling program, or to communicate minor changes or modifications in the program.**

4. **Participation in City, School, or Community Events**

If requested by the City, the Contractor shall participate in City, School, or Community Events as follows:

- a) **Provide display materials for use at City-sponsored events and school presentations.**
- b) **Provide promotional items for distribution at community events.**
- c) **Annual participation in an educational capacity at school assemblies, and other civic organizations.**
- d) **Participation in an educational capacity at minimum of four (4) community outreach events annually.**
- e) **Sponsor community events consistent with the City of Irwindale sponsorship levels attached, as may be updated by the City.**

5. **Recycling Collection Start Up Campaign**

To support the recycling collection programs that Contractor is offering, Contractor shall organize an official kick-off for the recycling programs and provide businesses with a brochure describing the new programs. Contractor will work with City staff to develop the information to be provided and will distribute the materials three (3) to four (4) weeks prior to the start up of services.

City of Irwindale Sponsorship Levels

Presenting Sponsor—\$5,000

- Name added to event sponsor as presenting sponsor
- Logo on City banner over Arrow Highway
- Promotional booth space (10' x 10') at event to be staffed by sponsor
- Ability to provide one (1) company banner for display at event
- Logo placement on promotional materials such as posters and flyers
- Logo placement in issue of Irwindale Chamber of Commerce Insights, which is mailed to over 900 households and businesses.
- Logo placement on sponsor recognition signage at the event
- Name recognition from stage during welcoming comments
- Name and logo on City of Irwindale website
- Name included in event media releases
- Logo and name in event program

Platinum Sponsor—\$2,500

- Promotional booth space (10' x 10') at event to be staffed by sponsor
- Ability to provide one (1) company banner for display at event
- Logo placement on promotion materials such as posters and flyers
- Logo placement in issue of Irwindale Chamber of Commerce Insights, which is mailed to over 900 households and businesses.
- Logo placement on sponsor recognition signage at the event
- Name recognition from stage during welcoming comments
- Name included in event media releases
- Name on City of Irwindale website
- Logo and name in event program

Gold Sponsor—\$1,500

- Ability to provide one (1) company banner for display at event
- Name placement on promotional materials such as posters and flyers
- Logo placement in issue of Irwindale Chamber of Commerce Insights, which is mailed to over 900 households and businesses.
- Name placement on sponsor recognition signage at the event
- Name recognition from stage during welcoming comments
- Name included in event media releases
- Name on City of Irwindale website
- Name in event program

Silver Sponsor—\$500 or more

- Logo placement on promotional materials such as posters and flyers
- Name recognition during welcoming comments
- Name included in event media releases
- Logo on City of Irwindale website
- Logo and name in event program

Bronze Sponsor —\$250 or more

- Logo placement on promotional materials (posters and flyers)
- Name recognition during welcoming comments
- Name included in event media releases
- Logo on City of Irwindale website
- Logo and name in event program

Friend Sponsor—In-Kind

- Name on City of Irwindale website
- Name recognition during welcoming comments
- Name in event program
- Name included in event media releases

Exhibit D – Rate Adjustment

RATE ADJUSTMENT

Each of the Maximum Rates provided in this Agreement consists of an Operations Component and a Disposal Component.

The Operations Component includes all costs except for disposal of Solid Waste at Puente Hills Landfill. Operational Component costs include, but are not necessarily limited to, collection of Solid Waste, Recyclables, and Green Waste and the cost of hauling materials to Puente Hills Landfill.

The Disposal Component is the per ton Disposal Fee incurred by Franchisee for disposal of all materials collected hereunder. The Disposal Component shall be the cost of disposal at the Puente Hills Landfill.

Rate Adjustment Formula – Annual COLA

The Operations Component is to be adjusted each January 1st in proportion to the increase or decrease in the cost of living as determined by the percentage change in the Consumer Price Index ("CPI") for the immediately previous twelve month period (December through November) for All Urban Consumers in the Los Angeles/Anaheim/Riverside area, or an equivalent index approved by mutual agreement in the event the CPI as described above is no longer published.

The Disposal Component is not subject to any CPI increase or decrease. Increases and decreases to the Disposal Fee will be reflected by adjustment of the Disposal Component which will be passed through to the consumer and the City (with respect to residential service) as set forth herein. For so long as materials collected hereunder may be delivered to the Puente Hills Landfill for ultimate disposal, the Disposal Component shall be adjusted upward or downward based on the percentage increase or decrease in the Puente Hills Landfill gate fee and any duly authorized governmental fees, assessments, or taxes collected with or upon such disposal fees. Any increase or decrease shall be effective as of its effective date to Franchisee. Any increase in the Disposal Component shall be effective as of its effective date to Franchisee.

Upon the commencement of operations of the MRF/TS, the Disposal Component shall be adjusted to be the Gate Fee of the MRF/TS for processing mixed solid waste which Gate Fee shall be established by Franchisee in accordance with the MRF/TS Agreements. The MRF/TS Gate Fee shall be divided into a Disposal Component and an Operations Component. The Operational Component shall be adjusted each January 1st in proportion to the increase or decrease in the cost of living as determined by the percentage change in the Consumer Price Index ("CPI") for the immediately previous twelve month period (December through November) for All Urban Consumers in the Los Angeles/Anaheim/Riverside area, or an equivalent index approved by mutual agreement in the event the CPI as described above is no longer published. The Disposal Fee shall be adjusted to reflect changes in the cost of

transporting and disposing of residue, subject to the City's right to confirm such costs in accordance with this Agreement and the MRF/TS Agreements.

Contractor shall provide City a revised schedule of Maximum Rates showing the effect of any increases or decreases in the Operations Component and the Disposal Component of the Maximum Rates charged hereunder. The notice will show the effect of such increases and decreases as to each category of service hereunder. Franchisee shall notify customers of such increases or decreases in by including notice with its periodic billing.

Special Rate Adjustment

In the event circumstances beyond the control of Franchisee impose or generate extraordinary costs in the performance of the Agreement, Franchisee may petition City to determine if an adjustment in compensation is warranted to avoid undue financial hardship on Franchisee. For each such request, Franchisee shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Franchisee in preparing the estimate of extraordinary costs. City shall review Franchisee's request and, in City's sole judgment, make the final determination on the adjustment, provided, however, that approval of such request shall not be unreasonably withheld.

Administrative Rate Adjustments.

Each Rate Adjustment except a Special Rate Adjustment or a Rate Adjustment under Section 6.1 shall be administrative. Franchisee shall provide the City Manager with calculations setting forth the proposed adjusted rate at least ten days prior to the proposed rate adjustment. The rate adjustment shall go into effect thereafter unless the City Manager shall object in which case the parties shall meet and confer and agree upon the proper application of the adjustment procedures set forth herein. The adjustments to the Maximum Rate that are allowed under this Agreement based on the CPI and on changes in the cost of disposal and transportation are not discretionary, but are a matter of right to Franchisee so long as Franchisee is not in default hereunder.