

RESIDENTIAL AND COMMERCIAL SOLID WASTE FRANCHISE AGREEMENT

BETWEEN

THE CITY OF MONROVIA AND

ARAKELIAN ENTERPRISES, INC. dba ATHENS SERVICES,

a California corporation,

July 1, 2016 to June 30, 2034

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RESIDENTIAL AND COMMERCIAL SOLID WASTE FRANCHISE AGREEMENT

THIS RESIDENTIAL AND COMMERCIAL SOLID WASTE FRANCHISE AGREEMENT (the "Agreement"), dated for reference _____, 2016, is made and entered into by and between the City of Monrovia ("City") and Arakelian Enterprises, Inc. dba Athens Services, a California corporation ("Collector").

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

WHEREAS, City is empowered under Section 7 of Article XI of the California Constitution to make and enforce, within its limits, all police and sanitary ordinances and regulations not in conflict with general laws; and

WHEREAS, the California Constitution and the California Integrated Waste Management Act of 1989 (the "Act") authorize City to determine the aspects of solid waste handling which are of local concern, including the means by which solid waste services are to be rendered and whether solid waste services are to be provided on an exclusive or nonexclusive basis; and

WHEREAS, the Act requires City to divert, through a combination of source reduction and recycling programs, fifty percent (50%) of its Solid Waste from landfill disposal; and

WHEREAS, uniformity in the type and frequency of collection services, means of collection and transportation, type of equipment used, and the nature, location, reporting information and extent of providing solid waste collection services within the City are vital for compliance with statutory requirements set forth by the Act; and

WHEREAS, Title 8 of the Monrovia Municipal Code institutes standards for the establishment and maintenance of an exclusive or non-exclusive system to provide residential and commercial solid waste collection, recycling and disposal services; and

WHEREAS, the City Council of the City of Monrovia has determined and found that public health, safety and well-being require that an exclusive franchise be granted to a qualified solid waste enterprise for residential solid waste collection, recycling and disposal services for all Residential Premises within the City; and

WHEREAS, on December 2, 2003, City and Collector entered into that certain Amended and Restated Exclusive Residential Solid Waste Franchise Agreement, which was subsequently amended by that certain First Amendment to the Exclusive Residential Solid Waste Franchise Agreement dated July 6, 2004, and that certain Second Amendment dated February 6, 2007, and amended and restated on August 4, 2009, and amended and restated by that certain Amended and Restated Exclusive Residential Solid Waste Franchise Agreement dated October 7, 2014 (as amended, the "Prior Residential Agreement"); and

WHEREAS, the City Council of the City of Monrovia has determined and found that public health, safety and well-being require that an exclusive franchise be granted to a qualified solid waste enterprise for commercial solid waste collection, recycling and disposal services for all Commercial Premises within the City; and

WHEREAS, City and Collector entered into that certain Agreement for Non-Exclusive Commercial Waste Collection, Recycling, and Disposal Services dated April 11, 2012, which was subsequently amended by that certain First Amendment to the Non-Exclusive Commercial Waste Collection, Recycling, and Disposal Services Agreement dated October 7, 2014 (as amended, the "Prior Commercial Agreement"); and

WHEREAS, the City Council of the City of Monrovia has determined and found that public health, safety and well-being require that an exclusive franchise be granted to a qualified solid waste enterprise for commercial solid waste collection, recycling and disposal services for all Commercial Premises within the Old Town Monrovia section of the City; and

WHEREAS, City and Collector entered into that certain Exclusive Franchise Agreement between the City of Monrovia and Athens Services for the Collection of Commercial and Industrial Solid Waste in Old Town Monrovia dated May 17, 2012, which was subsequently amended by that certain First Amendment to the Exclusive Franchise Agreement between the City of Monrovia and Athens Services for the Collection of Commercial and Industrial Solid Waste in Old Town Monrovia dated October 7, 2014 (as amended, the "Prior Old Town Agreement" and, together with the Prior Residential Agreement and the Prior Commercial Agreement, the "Prior Agreements"); and

WHEREAS, City and Consolidated Disposal Service, L.L.C., entered into that certain Agreement for Non-Exclusive Commercial Waste Collection, Recycling, and Disposal Services, dated April 11, 2012 (the "Consolidated Agreement"); and

WHEREAS, effective October 1, 2016, Collector will begin providing Collection Services pursuant to this Agreement to all Commercial Customers currently receiving such services under the Consolidated Agreement; and

WHEREAS, City and Collector desire to supersede and consolidate the subject matter of the Prior Agreements in order to streamline and conform to City's current solid waste and recycling program.

NOW, THEREFORE, THE PARTIES AGREE TO THE FOLLOWING:

TERMS OF AGREEMENT

ARTICLE 1. DEFINITIONS

Whenever any term used in this Agreement is defined in Chapter 8.08 or Chapter 8.10 of Title 8 of the Monrovia Municipal Code, the definitions in Chapter 8.08 or Chapter 8.10 shall apply unless the term is otherwise defined in this Agreement. Whenever any term used in this Agreement has been defined by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in Division 30, Part 1, Chapter 2 shall apply, unless the term is otherwise defined in this Agreement or in Chapter 8.08 or Chapter 8.10 of the Municipal Code. In addition, the following definitions are hereby incorporated into this Agreement:

“30-gallon Service” shall mean the collection of Solid Waste from a one (1) unit or two (2) unit Residential Premises in a 30-gallon Residential Solid Waste Container provided by Collector.

“AB1826” shall mean Chapter 12.9 (commencing with Section 42649.8) of Part 3 of Division 30 of the California Public Resources Code.

“Act” shall mean the California Integrated Waste Management Act of 1989 (California Public Resources Code § 40000 *et seq.*), as it now exists or may subsequently be amended, and all implementing regulations thereto.

“Bin” or “Residential Solid Waste Bin” shall mean a bin or solid waste container with a capacity of between one (1) and six (6) cubic yards, designed for mechanical pickup by collection vehicles and equipped with a lid, or where appropriate for the premises served, a roll-off or drop box or compactor.

“Bulky Items” shall mean large and small household appliances, furniture, carpets, mattresses, oversized yard waste such as tree trunks and branches if no larger than two feet (2’) in diameter and four feet (4’) in length, and similar large items.

“CERCLA” or “Superfund” shall mean the Comprehensive Environmental Response, Compensation and Liability Act (sometimes referred to as “Superfund”) (42 U.S.C. § 9601 *et seq.*) and all future amendments.

“City” shall mean the City of Monrovia, California, a municipal corporation.

“City Facilities” shall mean Monrovia City Hall, City Hall Annex, Monrovia Police Station, Fire Stations No. 1, 2 and 3, all City parks, Public Works corporate yard and office, and all other City-owned or City-leased facilities, as determined by the City Manager. “City Facilities” does not include any City-owned property not used for municipal functions or the property of any redevelopment agency.

“City Manager” shall mean the City Manager of City, or the City Manager’s designated representative.

“Co-collected” shall mean the collection by Collector, of Solid Waste and Commingled Recyclable Materials in the same compartment of the same collection vehicle.

“Collection Services” shall mean the services to be provided by Collector described in Section 5.02 and Section 6.02 of this Agreement.

“Collector” shall mean Arakelian Enterprises, Inc. dba Athens Services, a California corporation, and any successor thereof that may be authorized by City pursuant to this Agreement.

“Commercial Customer” shall mean a commercial business owner or a person in charge of the day-to-day activities at a Commercial Premises.

“Commercial Premises” shall mean any commercial or industrial enterprise operating in the City which generates Green Waste, Solid Waste, or Recyclable Materials. “Commercial Premises” shall not include any single or multi-family residential dwelling, any city facility.

“Commingled Recyclable Materials” shall mean two (2) or more different types of Recyclable Materials (e.g., clear glass bottles and steel cans) placed in the same container when set out for collection.

“Construction and Demolition Waste” shall mean any Solid Waste or debris generated as the result of construction or demolition, including without limitation, discarded packaging or containers and waste construction materials, whether brought on site for fabrication or used in construction or resulting from demolition, excluding liquid waste and hazardous waste.

“Customer” shall mean a Commercial Customer or Residential Customer.

“CPI” shall mean the Consumer Price Index as published by the United States Department of Labor, Bureau of Labor Statistics, for All Urban Consumers, Los Angeles-Riverside-Orange County area (Base 1982-84 = 100).

“CPI Change” shall mean the percentage increase in the CPI for the twelve (12) month period of April to April plus one percent (1%).

“Diversion” shall have the meaning set forth in Public Resources Code Section 40124.

“Effective Date” shall mean July 1, 2016.

“Electronic Waste” shall mean discarded cellular telephones; corded and cordless telephones; televisions; DVD, Blu-ray, and video cassette players and recorders; tape recorders and players; radios; electronic game consoles; microwave ovens; computers and computer peripheral equipment and accessories; printers; copiers; fax machines; scanners; disk drives and hard drives; audio components such as amplifiers and tuners; projectors; modems and routers; and television accessories used to stream signals from a computer or the Internet to a television.

“Exclusive Commercial Franchise” shall mean the exclusive franchise granted by City to Collector to provide Collection Services to Commercial Premises pursuant to this Agreement.

“Exclusive Residential Franchise” shall mean the exclusive franchise granted by City to Collector to provide Collection Services to Residential Premises pursuant to this Agreement.

“Franchise Fee” shall mean the fees described in Section 10.01 and Section 10.02. “Franchise Fee” does not include any fee within the meaning of Public Resources Code Section 41901 or within the scope of Government Code Section 66016.

“Green Waste” shall mean leaves, grass clippings, brush, branches, limbs and other forms of organic materials generated from landscapes or gardens at Residential Premises, and incidental pieces of scrap lumber no longer than twenty-four inches (24”) long, separated from other Solid Waste. “Green Waste” includes Christmas trees but does not include stumps or branches exceeding three inches (3”) in diameter or three feet (3’) in length, or palm fronds or yucca leaves, which are not suitable for composting.

“Green Waste Containers” shall mean a 90-gallon or 60-gallon container with cover and wheels, suitable for automated collection, to be provided to Residential Customers by Collector and used for the temporary accumulation and collection of Green Waste.

“Gross Revenues” means any and all revenue, and compensation in any form, received by Collector or subsidiaries, parent companies or other affiliates, or subcontractors of Collector, for the collection and transportation of Solid Waste and Recyclable Materials pursuant to this Agreement, in accordance with generally accepted accounting principles, without subtracting disposal or processing fees, City fees or other fees or any other cost of doing business, exclusive of revenue from the sale of Recyclable Materials.

“Gross Service Rate” means the Service Rate, including any applicable surcharges and Franchise Fees.

“Hazardous Substance” or “Hazardous Waste” shall mean any substance, waste or mixture of wastes defined as a “Hazardous Substance” or “Hazardous Waste” pursuant to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*) (“RCRA”), CERCLA, and all future amendments to either of them, or as defined pursuant to the California Hazardous Substances Account Act (California Health & Safety Code § 25300 *et seq.*), and any consumer products with any of the characteristics of a Hazardous Substance. Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over hazardous or Solid Waste, the term “Hazardous Waste” shall be construed to have the broader, more encompassing definition.

“In the City” or “Within the City” shall mean within the corporate limits of City as such limits exist on the Effective Date of this Agreement or may thereafter exist by virtue of the annexation of territory to, or detachment of territory from, the limits of City.

“Minimum Waste Diversion Rate” shall have the meaning ascribed in Section 7.05.

“Monthly Report” shall mean the Monthly Report required by Section 9.02 of this Agreement.

“Multi-Family Collection Services” shall mean Collection Services provided to Multi-Unit Residential Premises.

“Municipal Code” shall mean the Monrovia Municipal Code.

“Net Service Rate” shall mean the Service Rate less any applicable surcharges and Franchise Fees.

“Non-Exclusive Commercial Franchise” shall mean the exclusive franchise granted by City to Collector to provide Collection Services to Commercial Premises pursuant to this Agreement.

“Non-Standard Collection Services” shall mean all services to Residential Premises, other than Standard Collection Services, authorized by this Agreement. Non-Standard Collection Services

include, but are not limited to, collection and disposal of Solid Waste from Multi-Unit Residential Premises using bins, temporary drop box, roll off, and bin service, backyard service, servicing of a second or additional automated Residential Solid Waste Container, servicing of a third or additional automated Green Waste Container, extra collections or “go-back” service, scout service, and all other residential Solid Waste services provided to Residential Customers at Residential Premises for which Collector has been authorized by City to impose a charge in addition to or in lieu of the charge for Standard Collection Services.

“Organic Waste” shall have the meaning set forth in Public Resources Code Section 42649.8(c).

“Performance Review” shall have the meaning ascribed in Section 7.07 of this Agreement.

“Recyclable Materials” shall mean those materials that are suitable for recycling, as determined by resolution of the City Council and as set forth in this Agreement. A list of Recyclable Materials is included in this Agreement as Exhibit B, which is attached and incorporated into this Agreement by this reference. Exhibit B may be changed from time to time, upon mutual agreement of City and Collector.

“Recycling” shall mean the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become Solid Waste, and returning them to the economic mainstream in the form of raw materials for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling may include, but is not limited to, transformation and use of a materials recovery facility, used to divert waste from the landfill.

“Recycling Container” shall mean either a 90-gallon or 60-gallon container with cover and wheels, suitable for automated collection, to be provided to Residential Customers by Collector and used for the temporary accumulation and collection of Recyclable Materials.

“Residential Bear Resistant Solid Waste Container” shall mean a 90-gallon, covered, wheeled container with a bear-resistant latching lid and steel reinforcement, to be used for the temporary accumulation of Solid Waste at Residential Premises and suitable for automated collection as part of Standard Collection Service.

“Residential Customer” shall mean a person in charge of day-to-day activities at a Residential Premises.

“Residential Premises” shall mean a residential dwelling unit comprised of either a detached building, or each unit of a multi-family dwelling with separate kitchen and bathing facilities, including mobile home parks. “Residential Premises” shall not include hotels, motels, nursing homes, convalescent centers, barracks, dormitories or other similar places or institutions.

“Residential Solid Waste Container” shall mean a 90-gallon, 60-gallon, or 30-gallon container with cover and wheels, provided by Collector, to be used for the temporary accumulation of Solid Waste at Residential Premises and suitable for automated collection as part of Standard Collection Service.

“Service Rate” shall mean the maximum permissible rate that Collector may charge a Customer for a service provided by Collector pursuant to this Agreement. The initial Service Rates are set forth in Exhibit A.

“Single-Family Collection Services” shall mean Standard Collection Services, together with those Non-Standard Collection Services that are provided to the recipients of Standard Collection Services.

“Solid Waste” shall mean all putrescible and nonputrescible solid and semisolid wastes, generated in or from Residential Premises or Commercial Premises, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, as defined in California Public Resources Code Section 40191, excluding Hazardous Waste, liquid wastes and abandoned vehicles; provided, however, that Solid Waste shall not include Hazardous Waste, and shall include Organic Waste and Green Waste.

“Standard Collection Services” shall mean weekly collection of Solid Waste (including Green Waste) and Recyclable Materials from Residential Premises in 90-gallon, 60-gallon, or 30-gallon containers, in accordance with subsections A, B, C, and D of Section 5.02, but excluding the Non-Standard Collection Services referenced in Section 5.02A(2).

“State” shall mean the State of California.

“Term” shall have the meaning specified in Section 3.02 of this Agreement.

“Uncontrollable Circumstance” shall mean any event, occasion, situation such as work stoppage; riots; war or national emergency declared by the President or Congress and affecting the City of Monrovia; civil disturbance; natural disasters such as floods, earthquakes, landslides and fires; or other catastrophic events beyond the control of Collector; provided, however, that Collector shall notify City in writing of the nature of the matter constituting the enforced delay. “Other catastrophic events” does not include the financial inability of Collector to perform or failure of Collector to obtain necessary permits or licenses from other governmental agencies or the right to use the facilities of any public agency, even where such failure occurs despite the exercise of reasonable diligence by Collector.

“Waste Disposal and Diversion Plan” shall mean the plan described in Section 7.04 of this Agreement.

“Working Days” shall mean days on which Monrovia City Hall is open for business.

ARTICLE 2. COLLECTOR'S STATUS, AUTHORITY AND REPRESENTATIONS

2.01 Corporate Status and Authority. Collector warrants and represents the following:

- (1) that it is a corporation duly organized, validly existing and in good standing under the laws of the State of California;
- (2) that it 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;
- (3) that it possesses and shall provide an adequate number of vehicles and equipment for collection, transportation and disposal services for which it is responsible under this Agreement;
- (4) that it has the authority to enter into and perform its obligations under this Agreement;
- (5) that the person executing this Agreement on behalf of Collector is authorized by Collector to do so;
- (6) that this Agreement constitutes the legal, valid and binding obligation of Collector, enforceable against Collector in accordance with its terms, as defined in this Agreement and the Municipal Code;
- (7) that, as of the Effective Date, to the best knowledge of Collector officers and counsel, there are no actions, suits or other proceedings at law or in equity, pending before any court or governmental authority or threatened against Collector that would prevent Collector from performing its duties under this Agreement; and
- (8) that all information supplied by Collector in all submittals made in connection with the negotiation and award of this Agreement is correct and complete in all material respects.

2.02 Independent Contractor Status. Collector is an independent entity and is not the employee or agent of City for any purpose. No provision of this Agreement shall be construed as creating or establishing the relationship of employer and employee or an agency relationship between City and Collector or any agent, subcontractor or employee of City or Collector. Collector may perform services for other cities, persons or entities, as Collector deems appropriate.

2.03 Collector Authority. The provisions of this Agreement which reserve authority to City have been included in this Agreement solely to achieve compliance with Federal, State, and local laws, rules, regulations and interpretations thereof. It is Collector, and not City, which shall arrange for the collection of Solid Waste and Recyclable Materials pursuant to this Agreement. Nothing in this Agreement shall be construed as creating an inference that, by entering into this Agreement, or otherwise, that City is an "arranger" as that term is used in the context of CERCLA Section 107.

ARTICLE 3. EFFECTIVE DATE AND TERMINATION OF PRIOR AGREEMENTS; TERM OF AGREEMENT

3.01 Effective Date; Effect on Prior Agreements.

- A. The Effective Date of this Agreement shall be July 1, 2016.
- B. As of the Effective Date, the Prior Agreements are superseded in their entirety, and are of no further force or effect. Notwithstanding the preceding sentence, the parties acknowledge that the Exclusive Residential Solid Waste Franchise Agreement with Newco Waste Systems, Inc. dated January 26, 1999, as amended by that certain First Amendment dated March 9, 1999, that certain Second Amendment dated July 27, 1999, and that certain Third Amendment dated January 14, 2003, which was superseded in its entirety by the Prior Agreements, remains of no force or effect.

3.02 Term.

- A. Term. Unless terminated earlier pursuant to the terms of this Agreement, Collector shall provide Collection Services pursuant to this Agreement for a period commencing on July 1, 2016, and expiring at midnight on June 30, 2034, subject to Automatic Extensions as provided in Section 3.02B (“Term”). No later than five (5) years prior to expiration of the Term, City and Collector shall meet and confer with the intent of negotiating an extension of the Term of this Agreement.
- B. Automatic Extensions. Notwithstanding Section 3.02A, on each July 1 beginning July 1, 2017, the Term of this Agreement shall be extended one (1) year (each an “Automatic Extension”), so that the full Term of the Agreement shall remain eighteen (18) years.

Either party may terminate this Automatic Extension provision by giving the other party both (i) written notice of intent to terminate further Automatic Extensions on or before any February 28, and (ii) written notice of termination of further Automatic Extensions on or before the next-succeeding April 30 (“Extension Termination Deadline”). During the two (2) month period following the notice of intent to terminate further Automatic Extensions, the parties shall meet and negotiate in good faith at the request of either party. The City shall be represented by the City Manager. If the notice of termination of further Automatic Extensions is given, the Automatic Extension provision described in this Section 3.02B only shall terminate and be of no further force or effect, and all other provisions of this Agreement shall remain in full force and effect for the balance of the Term then outstanding.

- C. Effect of Expiration of Term. If requested by City, Collector shall promptly remove all containers upon the expiration of the Term or earlier termination of this Agreement. Notwithstanding the expiration of the Term or earlier termination of this Agreement, Collector shall remain obligated to provide certain services described in this Agreement, including, but not limited to payment of accrued Franchise Fees, reports, insurance, document copying opportunities and

indemnification, past the expiration of the period during which Collection Services are to be provided, pursuant to this Agreement.

ARTICLE 4. PAYMENTS TO CITY

4.01 Payments to City. As a condition of the grant of the Exclusive Residential Franchise and the Exclusive Commercial Franchise, Collector shall make the following payments to City:

- (1) On July 1, 2016, Collector shall pay City the sum of One Hundred Fifty Thousand Dollars (\$150,000) as a one-time payment.
- (2) Commencing in 2017, within sixty (60) days after each Extension Termination Deadline, provided neither party has given notice of termination of further Automatic Extensions as provided in Section 3.02B, Collector shall pay City the following amounts (collectively, the "Annual Payments"):
 - (a) An annual recycle rebate payment in the amount of One Hundred Thousand Dollars (\$100,000);
 - (b) An annual administrative payment in the amount of One Hundred Fifty Thousand Dollars (\$150,000);
 - (c) An annual infrastructure and recycling program payment in the amount of One Hundred Fifty Thousand Dollars (\$150,000); and
 - (d) An annual contract payment in the amount of Two Hundred Fifty Thousand Dollars (\$250,000).

The Annual Payments shall be adjusted each year after 2017, by the percentage increase in "CPI" for the preceding April-to-April period. Upon notice of termination of further Automatic Extensions as provided in Section 3.02B by either party, this Section 4.01(2) shall be of no further force or effect and Collector shall no longer be obligated to pay any Annual Payment.

- (3) Liquidated damages as specified in Exhibit D of this Agreement, for each day that a payment due under Section 4.01(2) is late.
- (4) Franchise Fees as provided in Section 10.03 of this Agreement.

If any payment due under this Section 4.01 is for any reason deemed to be invalid or unenforceable, the invalidity or unenforceability of such payment shall not affect any of the remaining provisions of this Agreement, which shall be enforced as if such invalid or unenforceable payment had not been contained herein, and City and Collector shall meet and confer and negotiate in good faith modifications to this Section 4.01 reasonably necessary to render such payment valid and enforceable.

ARTICLE 5. EXCLUSIVE RESIDENTIAL FRANCHISE

5.01 Grant and Acceptance of Franchise.

- A. Exclusive Residential Franchise. City hereby grants to Collector the Exclusive Residential Franchise to collect, transport, process, transform or dispose as appropriate all Solid Waste (including Green Waste) and Recyclable Materials generated or accumulated at Residential Premises in the City, including all Construction and Demolition Waste generated at Residential Premises in the City. The Exclusive Residential Franchise granted by this Agreement also includes all City Facilities. City will not let any contract to, grant any franchise, license or permit to, or enter into any agreement with any other person, firm, or entity for the performance herein required to be performed by Collector during the term of this Agreement, or any extension hereof. This Exclusive Residential Franchise is granted on the terms and conditions set forth in this Agreement and the Municipal Code.
- B. Acceptance of Exclusive Residential Franchise. Collector accepts the Exclusive Residential Franchise granted by City as defined by this Agreement. Collector agrees to perform all of the duties and obligations required by this Agreement.
- C. Limitations to Scope. Notwithstanding any provision to the contrary contained herein, the Exclusive Residential Franchise provided by this Agreement specifically excludes the following services, which services may be provided by persons other than Collector and which may be the subject of other permits, licenses, franchises or agreements issued or entered by City. The exclusions include the collection, transfer, transport, recycling, processing and / or disposal of:
- (1) Source separated Recyclable Materials generated on Residential Premises;
 - (2) Green Waste removed from a Residential Premises by a gardening, landscaping, or tree trimming contractor, utilizing its own equipment, as an incidental part of a total service offered by that contractor rather than as a hauling service;
 - (3) The casual or emergency collection of Solid Waste generated at City facilities, or collected from the public right-of-way by City through City officers or employees in the normal course of their City employment;
 - (4) Solid Waste generated by or at governmental agencies other than City, which may have facilities within the City, but over which City has no jurisdiction in connection with the regulation of Solid Waste; and,
 - (5) Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et seq., California Public Resources Code.

5.02 Residential Solid Waste Services.

A. General.

- (1) Standard Collection Services. Collector shall provide Standard Collection Services, including weekly collection of Solid Waste, Green Waste, and Recyclable Materials from Residential Premises utilizing 90-gallon, 60-gallon, or 30-gallon Residential Solid Waste Containers provided by Collector.
- (2) Non-Standard Collection Services. Collector shall provide Non-Standard Collection Services.
- (3) Provision of Residential Solid Waste Containers and Bins. Collector shall provide to each occupied one-unit and two-unit Residential Premises, at no additional charge to City or any Residential Customer, one (1) 90-gallon or 60-gallon Residential Solid Waste Container suitable for automated collection.

When requested by the person in charge of a one-unit or two-unit Residential Premises, Collector shall provide the Residential Premises with 30-gallon Service. Collector shall not be obligated to provide 30-gallon Service to more than one hundred (100) Residential Premises at any given time, but may do so in its discretion.

Collector shall maintain a stand-by list of those Residential Premises that request 30-gallon Service but to which Collector declines to provide such service because Collector is currently providing 30-gallon Service to at least one hundred (100) other Residential Premises. This list shall be prioritized by the date that Collector receives a request that it cannot fulfill. When the number of Residential Premises receiving 30-gallon Service falls below one hundred (100), Collector shall offer 30-gallon Service to those Residential Premises on the stand-by list, beginning with those that have the oldest request date.

For Multi-Unit Residential Premises, Collector shall provide a Bin or, upon request of the person in charge of the premises, Residential Solid Waste Containers.

- (4) Schedule of Collections. Collector shall collect all Solid Waste set out for collection at all Residential Premises in the City. Upon execution of this Agreement, Collector shall implement a schedule of regular Solid Waste collection days which shall be not less often than once per week, and at about the same time of day. Collector shall collect all Solid Waste, including Green Waste, and Recyclable Materials, on the same day. Collector shall provide not less than thirty (30) days' notice to City and Residential Customers of any proposed change in collection routes or pickup times. Collector shall consider City's advice on traffic and air pollution in the determination of route changes. Collections shall be made as quietly as possible, without unnecessary noise, disturbance or commotion.

(5) Care of Bins and Waste Enclosures. Collector shall exercise all reasonable care and diligence in collecting Solid Waste and Recyclable Materials, and shall clean out all overflowing bins and waste enclosures within twenty-four (24) hours of notification by any of the City Manager, the Customer, or Collector. Upon completion of cleaning any excess waste not caused by Collector, Collector may send pictures to Customer and may charge the Customer per the approved Service Rates set forth in Exhibit A.

B. Green Waste Program. Collector shall deliver to each occupied residence in the City that receives Standard Collection Service one (1) 90-gallon Green Waste Container suitable for automated collection, for the temporary accumulation and collection of Green Waste. Collector shall also offer the option of one (1) 60-gallon Green Waste Container, suitable for automated collection, to senior citizens or physically challenged Residential Customers who so request. Collector shall collect all Green Waste placed for collection in Green Waste Containers on all regularly scheduled collection days. Collector shall provide additional Green Waste Containers to each Residential Customer who sets Green Waste Materials out for collection and who requests additional Green Waste Containers. The first and second Green Containers shall be provided by Collector at no additional charge to Residential Customers or City. Any additional Green Waste Containers shall be provided by Collector for the additional charge specified in Exhibit A. Collector, at Collector's expense, shall repair or replace damaged Green Waste Containers. Collector, at Collector's expense, shall replace Green Waste Containers that a Residential Customer has reported to the police as having been stolen.

Collector shall also collect and recycle all Christmas trees that are free of flocking and other decorations, and that have been set out for collection during the period beginning on the first collection day after Christmas and ending on the third Saturday after Christmas.

Pursuant to AB 1594, the state will no longer allow Green Waste to be counted towards diversion requirements when used as alternative daily cover ("ADC") effective January 1, 2020. So long as state and local regulations continue to allow Green Waste to be counted towards diversion requirements when used as ADC, collected Green Waste shall be diverted from disposal in a manner consistent with such applicable state and local regulations. Given the regulations outlined pursuant to AB 1594 regarding the use of Green Waste as ADC, by January 1, 2019, Collector shall develop for City consideration diversion alternatives to ensure that the City remains in compliance with all State mandated diversion levels. Upon development of the diversion alternatives plan, the City and Collector shall meet and confer to discuss diversion alternatives and negotiate an adjustment to the Service Rates to account for any such alternatives utilized.

C. Recycling Program. Collector shall deliver to each occupied residence in the City that receives Standard Collection Service one (1) 90-gallon Recycling Container suitable for automated collection, for the temporary accumulation and collection of Commingled Recyclable Materials. Collector shall also offer the option of one (1) 60-gallon Recycling Container, suitable for automated collection, to senior

citizen or physically challenged Residential Customers who so request. Recycling Containers shall be provided by Collector at no additional charge to Residential Customers or City. Collector shall collect Commingled Recyclable Materials placed for collection in Recycling Containers on all regularly scheduled collection days. Commingled Recyclable Materials collected from Residential Premises shall not be Co-collected with Solid Waste from residential or commercial premises, or City Facilities. Collector shall provide additional automated Recycling Containers, to each Residential Customer who sets Recyclable Materials out for collection and who requests additional Recycling Containers. Collector, at Collector's expense, shall repair or replace damaged Recycling Containers. Collector, at Collector's expense, shall replace Recycling Containers that a Residential Customer has reported to the police as having been stolen.

- (1) Recycling Education. Collector shall insert into waste collection bills and mail quarterly recycling education information pieces provided by City in order to encourage and reinforce residential recycling efforts.
 - (2) Multi-Family Diversion Program. Collector shall provide recycling services to all multi-family dwellings of five (5) units or more. Collector shall report to City the addresses of all multi-family dwellings of five (5) units or more that are not receiving recycling services or whose owners, managers, or residents have refused to participate in the recycling services provided by Collector.
- D. Bulky Item Pickups. Collector shall provide all Residential Customers pickup of up to four (4) cubic yards of Bulky Items on two (2) days per calendar year at no additional charge. The charge for additional Bulky Item pickups and those quantities in excess of four (4) cubic yards is included in Exhibit A. Residential Customers desiring to have Bulky Items picked up shall notify Collector by telephone at least forty-eight (48) hours in advance of the pickup date desired by the Residential Customer. Collector shall collect all Bulky Items set out for collection on the Residential Customers' regular collection day.
- E. Collection Times; Holiday Collections. There shall be no collection of Solid Waste after 6:00 p.m. or before 6:00 a.m. or at any time on Sundays or on an Observed Holiday. The following is a list of Observed Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Collections that would have occurred on the day of an Observed Holiday and all collections later the same week shall be made on the next regular collection day. However, collections delayed due to an Observed Holiday shall not be deferred until the following week.
- F. Customer Education. Collector shall provide all of its Residential Customers with on-going education designed to accomplish the following:
- (1) Provide the Residential Customer with a thorough understanding of the services being provided by Collector, including the collection schedule, cost of service, billing and payment terms, the telephone number to call for customer service and for emergency service, and any restrictions on

the types of materials or Solid Waste that can be placed in Collector's bins and containers.

- (2) Provide the Residential Customer with information on the proper disposal of Hazardous Waste, universal waste, and Electronic Waste, including the closest location where these materials can be safely disposed or recycled.
- (3) Promote the participation of Collector's Residential Customers in Collector's Recycling program.
- (4) Maximize the amount of Recyclable Materials diverted from disposal.

G. Residential Customer Service Standards.

- (1) Residential Customer Inquiries and Complaints. City shall refer Residential Customer complaints to Collector for resolution. Collector shall take reasonable steps to resolve all Residential Customer complaints and inquiries on the same day the issue is brought to Collector's attention. Collector shall provide a local or toll-free telephone number for Residential Customers to call Collector's service representatives. Collector's service representatives shall be available between the hours of 7:00 a.m. to 5:00 p.m. Monday through Friday and by telephone from 7:00 a.m. to 12:00 noon on Saturdays when residential collections are taking place. Collector shall maintain a twenty-four (24) hour customer service hotline, at a local or toll-free telephone number, to receive after-hours calls. Collector's employees shall maintain a professional and courteous demeanor when addressing Residential Customers. Collector shall utilize bilingual service representatives when assisting Spanish-speaking Residential Customers.
- (2) Investigation of Complaints. Collector shall notify the City Manager of any outstanding customer service-related issues as they arise. Service complaints may be investigated by the City Manager. In addition, a Residential Customer dissatisfied with Collector's decision regarding a complaint may ask the City Manager to review the complaint. Before reviewing the complaint, the City Manager shall refer it to Collector. If Collector fails to cure the complaint within ten (10) days, the City Manager shall review the Residential Customer's complaint and determine if further action is warranted. The City Manager may request written statements from Collector and the Residential Customer, and/or oral presentations.
- (3) Government Liaison. Collector shall designate a "government liaison" who shall be responsible for working with the City Manager to resolve Residential Customer complaints. The City Manager shall be made aware of the name, position, and telephone number of this individual, and in the event that the "government liaison" is changed for whatever reason, Collector shall notify City within (48) hours of the change.
- (4) Residential Customer Service Logs. Collector shall keep a formal, auditable record of all complaints and compliments received, listing the

date of Residential Customer complaints/compliments, describing the nature of the complaint, compliment or request, the name and address of the Residential Customer, and when and what action was taken by Collector to resolve the complaint. All such records shall be maintained for a period of three (3) years, and shall be available for inspection and review by City. Collector shall prepare monthly and annual summaries of Residential Customer complaints/compliments. The summaries shall be available and delivered to the City Manager in accordance with the provisions of Article 9.

- (5) Training. In the interest of public safety and well-being, Collector shall provide regular and continuing training to its personnel, including but not limited to safety training and customer service training, to insure that high quality service is provided to Residential Customers at all times.

H. Equipment. Collector shall provide all equipment used to provide Collection Services, and shall maintain this equipment in a safe and sanitary manner, and in good operating condition and appearance.

- (1) Residential Solid Waste Containers. All Residential Solid Waste Containers to be used for the temporary accumulation and collection of Solid Waste from Residential Customers utilizing Standard Collection Services shall be automated-type 30-gallon, 60-gallon, or 90-gallon, covered, wheeled containers, which shall be supplied and maintained by Collector. The City Manager may require Collector to replace damaged or worn Residential Solid Waste Containers as needed. Collector shall ensure that all containers are uniform in appearance, including same colors and corporate logo.
- (2) Residential Solid Waste Bins. All Residential Solid Waste Bins to be used for Solid Waste collection at Multi-unit Premises shall be covered, wheeled Bins, which shall be supplied at no additional charge, and maintained by Collector. The City Manager may require Collector to replace damaged or worn Residential Solid Waste Bins as needed. All Residential Solid Waste and recycling Bins, including wheels, lids, and locks (which shall be provided if requested by the person in charge of the premises), shall be properly maintained, painted, and uniform in appearance, with the same colors and corporate logo.
- (3) Recycling Containers. All Recycling Containers to be used by Residential Customers for the temporary accumulation and collection of Commingled Recyclable Materials shall be automated-type 60-gallon or 90-gallon, covered, wheeled containers, which shall be supplied and maintained by Collector. The City Manager may require Collector to replace damaged or worn Recycling Containers as needed. Collector shall ensure that all Recycling Containers are uniform in appearance, including same colors and corporate logo.
- (4) Green Waste Containers. All Green Waste Containers to be used by Residential Customers for the temporary accumulation and collection of Green Waste shall be automated-type 60-gallon or 90-gallon, covered,

wheeled containers, which shall be supplied and maintained by Collector. The City Manager may require Collector to replace damaged or worn Green Waste Containers as needed. Collector shall ensure that all Green Waste Containers are uniform in appearance, including same colors and corporate logo.

- (5) Replacement of Vehicles and Containers. Collector shall be responsible for replacement of vehicles and Containers at no additional cost to City or Residential Customers. All replacement vehicles must meet the performance standards of this Agreement and all applicable local, state, and federal regulations.
- (6) Residential Bear Resistant Solid Waste Containers. All Residential Bear Resistant Solid Waste Containers shall be certified as having passed official bear-resistance testing. All such Containers shall be supplied and maintained by Collector. Collector shall offer a minimum ten (10) year warranty from date of delivery to Residential Customer regardless of the manufacturer's warranty. Collector may require that Residential Customers requesting Residential Bear Resistant Solid Waste Containers sign a service agreement of not more than thirty-six (36) months prior to Container delivery. Collector shall offer a thirty (30) day return and cancellation policy from the date of Container delivery and shall provide written notice of the same to the Residential Customer concurrent with the delivery of the container.
- (7) Unoccupied Premises – Termination of Service. Within five (5) Working Days of receiving notification from the person in charge of the day-to-day activities of Residential Premises that such premises will be unoccupied **and** requesting that Collector remove all Solid Waste Containers or Bins, Recycling Containers, and Green Waste Containers from the unoccupied premises, Collector shall remove all such Containers or Bins from such unoccupied premises. Notwithstanding anything to the contrary contained in this Agreement, Collector shall not be required to remove any such Containers or Bins from any unoccupied premises unless and until Collector has received from the person in charge of the day-to-day activities of the Residential Premises the necessary permission and unrestricted access to the applicable unoccupied premises. Subject to the limitation set forth in the preceding sentence, failure of Collector to remove all containers and bins within five (5) Working Days may subject Collector to liquidated damages as specified in Exhibit D.

I. City Facilities.

- (1) City Facilities. Collector shall provide weekly Solid Waste, Green Waste and Recyclable Materials collection and disposal service to all City Facilities, at no charge to City.
- (2) Pickup of Illegally Dumped Bulky Items. Within seventy-two (72) hours of a request by the City Manager, Collector shall collect and dispose of Bulky Items abandoned on public property within the City. Except as

specifically provided for in Section 5.02D, Collector shall collect and dispose of such Bulky Items at no cost to City.

J. Circumstances Excusing Collection Service.

- (1) Public Streets. Collector shall make no collections from residences not adjacent to a public street or public alley unless an easement has been granted to City for such purpose.
- (2) Residential Solid Waste Only. Collector shall collect only that Solid Waste, Green Waste or Recyclable Materials that accumulate on the Residential Premises from which the collection is made.
- (3) Rain or Natural Disaster. Should some streets become impassable during periods of heavy rain or prolonged rain, or due to a natural disaster, Collector may determine that collection vehicles can no longer provide service in the street. In such instance, Collector shall take the following steps:
 - (a) Notify the City Manager, giving location of impassable street(s).
 - (b) Notify Residential Customers that collection service will be available temporarily at the entrance to the street location.
 - (c) Notify City when the street is returned to service. Return Residential Solid Waste Containers if applicable.
 - (d) Notify Residential Customers of the date that collection service will again be delivered in the street location.

K. Collection of Electronic Waste.

- (1) Collector shall provide all Residential Customers with curbside collection of Electronic Waste, and may charge City a fee for such collection as provided in Exhibit A. Collector shall collect Electronic Waste placed at the curb by a Residential Customer on the Residential Customer's next regularly scheduled collection day; provided that the Residential Customer has provided Collector with at least twenty-four (24) hours prior notice requesting collection of Electronic Waste.
- (2) Upon request of City, Collector shall collect abandoned Electronic Waste identified by City. Such collection shall occur within two (2) Working Days of the notification by City.
- (3) Collector shall be responsible for ensuring that all Electronic Waste collected is disposed of in accordance with local, state, and federal regulations.
- (4) Collector shall provide City with a monthly statement of the amount of Electronic Waste collected, which shall include:

- (a) Total number of Residential Premises from which Electronic Waste was collected, and the total number of items of Electronic Waste collected from these premises.
- (b) Total number of times that Electronic Waste was collected from the public rights-of-way at the request of City, and the total number of items of Electronic Waste collected from the public rights-of-way.
- (c) Total fees billed to City for collection of Electronic Waste, as defined in Exhibit A.

5.03 Residential Brush Disposal Services.

- A. To assist City with enforcing compliance with the Municipal Code regarding fire protection and brush clearing areas, Collector will collect and dispose of brush cleared from Residential Premises annually between May 1 and June 30 during the Term of this Agreement. The following standards pertain to residential brush disposal services available from Collector during this period:
- (1) Residential brush disposal services by Collector shall be available to Residential Premises located within the Monrovia Fire Hazard Zone, as adopted by City and depicted on Exhibit F attached hereto and incorporated herein by this reference.
 - (2) Residential brush disposal services by Collector shall be limited to the items described in Sections 5.03A(3) through 5.03A(5) below. Residential Customers shall be responsible for disposal of regular and normal clippings and cuttings generated during the brush disposal period.
 - (3) Small Amounts of Brush. Residential Customers shall place items such as grass clippings, tree trimmings, leaves, brush, branches, limbs, and other organic material generated from landscape or gardens in Green Waste Containers. Green Waste Containers containing any of the following items shall not be collected:
 - (a) Stumps or branches exceeding three inches in diameter or three feet in length;
 - (b) Palm fronds, yucca leaves, or bamboo; or
 - (c) Dirt, rocks, or trash.
 - (4) Medium Amounts of Brush. Residential Customers shall place larger green waste in a space no greater than four feet by six feet in size. Bushes and branches must be:
 - (a) Cut and tied in bundles no longer than four feet in length; and
 - (b) Less than 50 pounds.

- (5) Large Amounts of Brush. Upon request by a Residential Customer to Collector or the City of Monrovia Fire Department, bins will be provided for cleared large amounts of brush in the Very High Fire Severity Zone, as designated by City. Residential Customers are responsible for loading the bins with cleared brush only, and not general household waste. Collector shall make available bins ranging in size from a three cubic yard temporary bin to a 20 cubic yard roll-off, depending on the circumstances, location, amount of debris, and area. If necessary, Collector and City will confer to decide on the appropriate size of the bin, the number of bins needed, and their placement.

5.04 Residential Compost Give-Away Services.

- A. At no additional charge to Customers, Collector will conduct two bi-annual residential compost give-away events in the City, with details regarding the compost give-away events to be developed at the discretion of the City Manager. The residential compost give-away events will be staffed by Collector's employees.

ARTICLE 6. EXCLUSIVE COMMERCIAL FRANCHISE

6.01 Grant and Acceptance of Franchise.

- A. City hereby grants to Collector a Non-Exclusive Commercial Franchise to collect, transport, process, transform or dispose as appropriate all Solid Waste (including Green Waste, food waste, and Organic Waste) and Recyclable Materials generated or accumulated at Commercial Premises in the City, including all Construction and Demolition Waste generated at Commercial Premises in the City, effective upon the execution of this Agreement. Furthermore, effective October 1, 2016, City hereby grants to Collector an Exclusive Commercial Franchise to collect, transport, process, transform or dispose as appropriate all Solid Waste (including Green Waste, food waste, and Organic Waste) and Recyclable Materials generated or accumulated at Commercial Premises in the City, including all Construction and Demolition Waste generated at Commercial Premises in the City. Both the Non-Exclusive Commercial Franchise and the Exclusive Commercial Franchise are granted on the terms and conditions set forth in this Agreement and the Municipal Code.
- B. Acceptance of Non-Exclusive and Exclusive Commercial Franchise. Collector accepts the Non-Exclusive Commercial Franchise and the Exclusive Commercial Franchise granted by City as defined by this Agreement. Collector agrees to perform all of the duties and obligations required by this Agreement.
- C. Limitations to Scope. Notwithstanding any provision to the contrary contained herein, the Exclusive Commercial Franchise provided by this Agreement specifically excludes the following services, which services may be provided by persons other than Collector and which may be the subject of other permits, licenses, franchises or agreements issued or entered by City. The exclusions include the collection, transfer, transport, recycling, processing and / or disposal of:
- (1) Source separated Recyclable Materials generated on Commercial Premises;
 - (2) Green Waste removed from a Commercial Premises by a gardening, landscaping, or tree trimming contractor, utilizing its own equipment, as an incidental part of a total service offered by that contractor rather than as a hauling service;
 - (3) The casual or emergency collection of Solid Waste generated at City facilities, or collected from the public right-of-way by City through City officers or employees in the normal course of their City employment;
 - (4) Solid Waste generated by or at governmental agencies other than City, which may have facilities within the City, but over which City has no jurisdiction in connection with the regulation of Solid Waste; and,
 - (5) Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et seq., California Public Resources Code.

6.02 Commercial Solid Waste Services. Collector shall be obligated and does hereby agree to do and perform as follows:

- A. Compliance with Applicable Law. Collector agrees to collect, handle, transport, process, and dispose of Solid Waste and Recyclables and to perform all of the services on its part as required by the provisions of this Agreement, in a careful manner, and in accordance with all applicable laws, including but not limited to Chapter 8.10 of the Monrovia Municipal Code, which is incorporated herein by this reference.
- B. City Licenses. Maintain all required licenses, not limited to a City business license, applicable fees, and taxes.
- C. Collection and Disposal. Pursuant to the terms of this Agreement, Collector shall furnish all labor, material, and equipment necessary to:
 - (1) Collect and dispose of Solid Waste from Commercial Premises within the City, where Collector has made service arrangements or executed an agreement with a Commercial Customer for the collection and disposal of such Solid Waste;
 - (2) Collect and recycle the Recyclables generated at Commercial Premises in which a Commercial Customer has requested such service; and
 - (3) Provide Customers with regular education regarding the programs and services offered by Collector.
- D. Collector shall be responsible for ensuring that all service contracts Collector executes with its Commercial Customers to provide the services authorized by this Agreement are consistent with the terms of Monrovia Municipal Code Chapter 8.10, Title 14, Chapter 9.4 of the California Code of Regulations, and this Agreement.
- E. Frequency of Collection. The frequency of collection and bin capacity is subject to individual arrangement between the Collector and its Commercial Customers. There shall be no limit on the quantity of Solid Waste and Recyclables that will be picked up from each Commercial Premises, provided that the Solid Waste and Recyclables are presented for collection in conformity with the requirements of this Agreement.

Notwithstanding the arrangement between Collector and a Commercial Customer regarding the frequency of collection, City may require a different frequency of collection if the frequency of collection arranged between Collector and a Commercial Customer results in a health or safety concern or code violation.
- F. Hours of Collection. Collection from Commercial Premises shall take place between the hours of 7 A.M. and 6 P.M. on any day of the week. Hours and days of collection are subject to change by the City Council.

- G. Collection of Special Materials. If requested by a Commercial Customer, Collector may collect and dispose of discarded automobile or truck bodies, or other heavy objects, such as dirt, sod, or rock, which require special handling.
- H. Special Clean-Up Collections. Collector agrees that in addition to the normal schedule of collections of regular service volumes, it will provide such labor, materials, and equipment as may be necessary to conduct special pick-up collections for Commercial Customers.
- I. Bulky Item Collections. Collector shall collect any Bulky Items that have been abandoned on Commercial Premises if requested by the commercial business owner or City. Collector shall provide for the Recycling of Bulky Items if a market for such waste is available.
- J. Care of Containers. All containers shall be replaced where found to be damaged or defective. Containers and lids shall not be deposited in the streets or on adjoining property. Collector, its agents and employees, shall not throw containers from the truck to the ground, or in any other manner break or damage same.
- K. Routes and Changes. Collector shall establish routes and schedules for collection of Solid Waste and Recyclables and shall notify its Commercial Customers within the City, in writing, of their individual scheduled days of Collection including an alternate day for Observed Holidays occurring on the scheduled pick-up day. Collector shall maintain these schedules except that they may be changed by notification to Commercial Customers in writing.
- L. Solid Waste Not Collected. When any Solid Waste or Recyclables placed for collection by a Commercial Customer are not collected by Collector, Collector shall leave a tag at least 3-1/2" x 6-3/4" in size stating the reasons for its refusal to collect the Solid Waste and/or Recyclables, giving reference to the provision of the Municipal Code or of this Agreement which gives ground for the refusal. The tag shall carry Collector's business firm name and telephone number, and shall be securely fastened to the container or to the article of Solid Waste.
- M. Office for Inquiries and Complaints. The Collector shall maintain an office at some fixed place, and equip all trucks, including the field supervisor's or foreperson's vehicle, with two-way communication with such office, and shall maintain a telephone in Collector's name at that location. Collector shall at all times during the hours between 8:00 A.M. and 5:00 P.M., Monday through Friday, and during any time that Commercial Collection Services are provided on a Saturday, have some person at the office with whom the City or Commercial Customer may communicate. Complaints received by Collector, either directly from Commercial Customers or the City, shall be resolved within 24 hours from the time of complaint. Collector shall provide to the City an emergency telephone number that can be reached 24 hours per day, 7 days per week. Collector shall log all complaints received, and that log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, name of the employee recording complaint and the action taken by Collector to respond to and remedy the complaint. Daily logs of complaints (both verbal and written) concerning collection of Solid Waste and

Recyclable Materials shall be retained for a minimum of twenty-four (24) months and shall be available to the City at all times upon request. Collector shall provide the City with a copy of Collector's log of complaints received from Commercial Customers.

- N. Recycling. Collector shall offer to provide Recycling services to all of its Commercial Customers in the City, and shall furnish all labor, material and equipment necessary to collect, process, and market Recyclable Materials collected from those Commercial Customers that request Recycling services; provided, however, that Collector shall not be required to provide source-separated Recycling services to Commercial Customers, but may do so for the additional charge specified in Exhibit A. If any of Collector's Commercial Customers that generate four (4) or more cubic yards of Solid Waste and Recyclable Materials per week refuse or decline to participate in Collector's Recycling services, Collector shall notify City within thirty (30) days of the Commercial Customer's refusal to participate in Collector's Recycling services by providing City with the name of the Commercial Customer and the name and telephone number of the Commercial Customer's representative.
- O. Organic Waste. Collector shall offer to provide Recycling services specifically for Organic Waste to all of its Commercial Customers required to arrange for Recycling services specifically for Organic Waste pursuant to AB1826, and shall furnish all labor, material, and equipment, including Organic Waste containers, necessary to collect, process, and market Organic Waste collected from all Commercial Customers that request such Recycling services for Organic Waste. Collector may, from time to time, audit Commercial Customers receiving Organic Waste services and Collector shall be entitled to charge any Commercial Customer determined to be misusing Organic Waste containers an Organic Waste container misuse charge in the amount set forth in Exhibit A.
- P. Spot Inspections. At any time requested by City, Collector shall furnish the City with full access to inspect its collection containers, equipment, trucks, and transfer, processing, composting, or disposal facilities for compliance with the requirements of this Agreement.
- Q. Customer Education. Collector shall provide all of its Commercial Customers with on-going education designed to accomplish the following:
 - (1) Provide the Commercial Customer with a thorough understanding of the services being provided by Collector, including the collection schedule, cost of service, billing and payment terms, the telephone number to call for customer service and for emergency service, and any restrictions on the types of materials or Solid Waste that can be placed in Collector's bins and containers.
 - (2) Provide the Commercial Customer with information on the proper disposal of Hazardous Waste, universal waste, and Electronic Waste, including the closest location where these materials can be safely disposed or recycled.

- (3) Promote the participation of Collector's Commercial Customers and the Commercial Customer's employees in Collector's Recycling program.
- (4) Maximize the amount of Recyclable Materials diverted from disposal.

R. Commercial Collection Service Standards.

- (1) Solid Waste Containers. Commercial Premises shall have Solid Waste containers provided by the Collector. All Bins shall have lids.
- (2) Solid Waste Bin Availability. Collector shall at all times have in stock a sufficient quantity of Solid Waste Bins of each of the standard cubic yard capacities for delivery to Commercial Customer(s) accounts or for the replacement of deteriorated or defective Solid Waste Bins in service. Collector shall provide a sufficient number and size of Solid Waste Bins compatible with the size of the Solid Waste bin enclosure and the quantity of waste generated by Commercial Customer accounts.
- (3) Solid Waste Bin Maintenance. Collector shall at all times keep Solid Waste Bins and lids in good, clean and sanitary condition to the satisfaction of the City. Solid Waste Bins shall be free of "tagging" or graffiti and shall be replaced or repainted within 24 hours as necessary. Solid Waste Bins which are used for putrescible waste materials shall be steam cleaned at least once per year, or more frequently if required by the City. Solid Waste Bins to be cleaned or repaired shall be removed from the service location and taken to Collector's maintenance facility for such cleaning or repair.
- (4) Solid Waste Bin Enclosure Maintenance. It shall be the responsibility of the Commercial Customer(s) to keep the Solid Waste bin enclosure structure in good repair and clean. However, Collector shall pick up any Solid Waste, debris or litter that is deposited on the ground as a result of the dumping of the Solid Waste Bin.
- (5) Solid Waste Bin Castors and/or Hasp and Lock Service. Collector shall furnish Solid Waste Bins with castors and/or hasps and locks upon request by a Commercial Customer. Every lock for each unit shall be "keyed alike".

6.03 Monrovia Transit Bus Stop Services.

- A. Monrovia Transit Bus Stop Services. At no additional charge, Collector will provide Collection Services from the barrels at Monrovia Transit bus stop locations within the City, not to exceed 35 bus stop locations, as needed up to six times per week. Current bus stop locations are depicted on Exhibit G attached hereto and incorporated herein by reference. City shall provide reasonable notice to Collector of any relocation of bus stops to facilitate Collector modifying its routes. Should the number of bus stop locations exceed 35, Collector and City shall negotiate in good faith an equitable adjustment to Collector's Service Rates for the excess bus stop services. Collector will remove and replace the plastic bag liner containing Solid Waste from the bus stop barrel and dispose of

the Solid Waste. Collector shall not be obligated to collect Solid Waste not contained within the bus stop barrel liner or Bulky Items.

ARTICLE 7. COLLECTION SERVICES REQUIREMENTS

7.01 Standards for Collections and Operations. Collector shall conform all of its operations and activities to the following:

- A. Solid Waste Disposal. Collector shall dispose of all collected Solid Waste that is not recycled, in accordance with applicable law. Collector shall make every effort to process Solid Waste, or to otherwise divert it from disposal in a landfill to the extent possible, to achieve maximum Diversion.
- B. Traffic and Noise Problems. Collector shall so conduct its operation as to offer the least possible obstruction and inconvenience to public traffic or disruption to the peace and quiet of the area within which Collections are effected. Collector shall comply with the City's noise regulations as set forth in Chapter 9.44 of the Monrovia Municipal Code, while being sensitive to the residential dwellings adjacent to any commercial collection points in regards to collection times (*i.e.*, early morning).
- C. Equipment. All equipment used by Collector to perform work under this Agreement shall conform to the highest industry standards and shall be maintained in a clean and efficient condition. Collection vehicles shall be free of "tagging" or graffiti. All vehicles used to collect, transport, or dispose of Solid Waste shall be certified annually by the California Highway Patrol. Brakes shall be inspected at least quarterly. Copies of all vehicle inspections and certifications shall be made available to the City Manager upon request. All vehicles, containers, and Bins used to perform this Agreement shall be kept clean, in good repair, and will be uniformly painted to the satisfaction of the City Manager.
- D. Vehicle Standards. Collection vehicles must be in compliance with all applicable air pollution control laws, including but not limited to Article 4 of Chapter 1, Division 3, Title 13, of the California Code of Regulations. All automated and front-load collection vehicles operating in the City pursuant to this Agreement must exclusively use "alternative fuel", as that term is defined in Section 2020 of Article 4 of Chapter 1, Division 3, Title 13, of the California Code of Regulations. Each vehicle shall be so constructed and used so that no Solid Waste, Recyclables, oil, grease or other material will blow, fall, or leak out of the vehicle. All Solid Waste and Recyclables shall be transported by means of vehicles equipped with water-tight bodies and close-fitting metal covers. Any Solid Waste or Recyclables dropped or spilled in collection, transfer or transportation shall be immediately cleaned up or removed by Collector. A broom, absorbent, a shovel, and bucket shall be carried at all times on each vehicle for this purpose. Collector shall report spills to the City (Public Works Department-Environmental Services) and remediate spills immediately in accordance with NPDES requirements.
- E. Vehicle Identification. A distinct identification number or letter shall be assigned to each vehicle used in collection activities, and shall be prominently displayed on the vehicle and in plain sight. Each vehicle shall also bear Collector's business or company name and local telephone number in letters large enough to be read from the curbside when a vehicle is moving.

- F. No Storage on Public Property. Collector shall not store any vehicle on any public street or other public property in the City.
- G. Failure to Comply. Should the City Manager at any time give notification in writing to Collector that any vehicle does not comply with the standards hereunder, that vehicle shall forthwith be removed from service by Collector and shall not again be used until inspected and approved in writing by the City Manager.
- H. Equipment Storage. All vehicles and equipment used in the collection of Solid Waste, if kept within the boundaries of the City, shall at all times when not in use in collection of Solid Waste be kept on property of the proper zone either within a building or fenced yard.
- I. Collector's Employees. During the term of this Agreement, Collector shall employ sufficient personnel qualified by reason of education, training and experience to discharge adequately the services agreed to be performed by Collector pursuant to the terms of this Agreement. Collector shall provide high quality service at all times, and personnel retained to perform collection services will be temperate, competent and otherwise fully qualified to fulfill the obligations of Collector.
- J. Emergency Vehicle. At all times that collection is occurring Collector shall maintain an emergency service vehicle to respond to complaints or emergency calls.
- K. Liaison with City. Collector shall visit City offices at such times as the City Manager shall designate for the purpose of discussing any matters relating to, or complaints which may be involved with the performance of the Agreement. Collector shall report back as directed on any action taken with reference to subject matter so discussed.
- L. Hazardous Materials Notifications and Procedures. Collector has no obligation to collect Hazardous Waste pursuant to this Agreement. Collector shall not be required to filter through and thoroughly inspect the Solid Waste disposed of in Containers or Bins by Customers in order to ensure that it does not contain any Hazardous Waste. Collector, however, shall take reasonable steps to avoid collecting Hazardous Waste and shall refuse to collect and dispose of any such waste of which it becomes aware. Collector employees shall place a tag on any Container or Bin containing Hazardous Waste informing the Customer that special handling is required disposal.

Collector shall notify in writing the Monrovia Fire Department of Hazardous Waste, found or observed by Collector anywhere in the City. If Collector observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Waste unlawfully disposed of or released and which poses an immediate threat to public health, welfare or safety, Collector shall also immediately notify the City Manager and the Monrovia Fire Department.

7.02 Billing and Collections.

- A. Collector Responsibility. Collector shall be solely responsible for billing and collections for Collection Services provided under this Agreement. Collector, at

its discretion, may bill quarterly in advance. However, upon request by a Residential Customer, Collector shall bill monthly in advance at no additional charge.

(1) All Customer bills shall include a line item separately stating the applicable AB1826 Organics Waste Program Surcharge component as set forth in Exhibit A. This line item shall read "State of California AB1826 – Organics Waste Program Surcharge".

B. Collections Procedures. All new accounts may be required to fund a security deposit. Accounts are billed quarterly on the first day of each calendar quarter for that quarter's service. Payment terms are net thirty (30) days. Payments not received within thirty (30) days are considered delinquent.

If payment is not received within ninety (90) days of billing, service will be stopped. The Customer shall receive a notice of intent to stop service delivery no later than seventy-two (72) hours prior to stoppage. If the account is not brought up to date within fifteen (15) days of stopped service, all Bins and Containers shall be removed, any security deposit will be credited against the past due balance, and any remaining balance may be submitted to a collection agency.

C. Late Charges. Collector shall be entitled to charge each Customer late charges for the non-payment of any bill that is unpaid for a period of thirty (30) days from the last day of the month for which the services were rendered. Late charges cannot be charged for the period of time for which the services have not yet been rendered but may be assessed thirty (30) days beyond the payment date of the billing, whichever is later. In addition, Collector shall have the right to charge Customers a "returned check fee" for Customers' checks returned to Collector for lack of sufficient funds or invalid accounts.

Collector may not impose late charges or returned check fees in excess of the maximum amount permitted by applicable law or by the approved Service Rates.

D. Suspended Service. In the event that Residential Premises are temporarily unoccupied for more than thirty (30) days, Collector, upon notification by the person in charge of the day-to-day activities of the Residential Premises, shall temporarily discontinue Solid Waste collection services to those premises. Collector shall refund amounts paid for advance billing for such services, upon notification by the person in charge of vacant Residential Premises at which collection service has been discontinued.

E. Fees and Gratuities. Neither Collector nor any agent or person employed by it shall request, demand or accept, either directly or indirectly, any compensation or gratuity from any person, firm or corporation for collections made pursuant to this Agreement, except as herein provided.

7.03 Emergency and Disaster Response and Stand-by Priority Service.

A. City shall develop an Emergency Response and Clean-up Plan in consultation with Collector.

- B. In the event of an emergency or natural disaster, and when requested by the City Manager or Public Works Director, Collector shall provide City with the equipment and labor required to collect, cleanup, and remove debris resulting from the emergency or natural disaster. Collector shall use commercially reasonable efforts to dispatch the requested equipment and labor to City as promptly as practicable following the request by the City Manager or Public Works Director.
- C. Notwithstanding Section 5.01A or any other provision of this Agreement or the Municipal Code, Collector agrees that, in the event that Collector is unable to respond within the time period requested by City for collection, cleanup and removal of debris resulting from an emergency or natural disaster, City shall have the right to engage other persons, firms, and entities to collect, cleanup and remove debris resulting from such emergency or natural disaster for a period ending on the earlier of the date such collection, cleanup and removal is complete or thirty (30) days following the original request from City.
- D. At the time when Collector's work may continue following a natural disaster, Collector will cooperate with City to prepare and implement a disaster recovery plan. This plan shall identify Collector's plans for maximizing the amount of Recyclable Materials diverted from the waste and debris created by the disaster and to identify and secure disposal sites and capacity for such waste.
- E. City shall pay Collector for the services provided in subsections B and D of this Section 7.01 as specified in Exhibit A. Collector's requests for payment for these services shall be accompanied by a full accounting of the labor hours, vehicle usage, disposal costs, and any other costs incurred by Collector for which Collector is seeking payment. City reserves the right to audit Collector's books and records to ascertain the accuracy of Collector's costs.

7.04 Waste Disposal and Diversion Plan.

- A. Annually, on or before the date set forth in the Schedule for Submittals (Exhibit C), Collector shall submit a Waste Disposal and Diversion Plan to City. This plan shall (i) clearly demonstrate that Collector has made provisions to provide secure disposal capacity that is adequate to meet the waste disposal needs of Collector's Customers for the one (1) year period commencing on July 1 of the year of submittal of the plan, (ii) describe the tentative plans of Collector regarding disposal capacity arrangements for the five (5) year period commencing on July 1 of the year of submittal (for the avoidance of doubt, Collector shall only be required to secure disposal capacity for the one (1) year period commencing on July 1 of the year of submittal) and (iii) shall include the following information:
 - (1) The names of the waste disposal facilities that Collector plans to utilize for disposal of Solid Waste collected that is not diverted from disposal.
 - (2) The capacity arrangements that have been made by Collector with the owners of the disposal and processing facilities that Collector proposes to utilize, including the specific amount of disposal and processing capacity that Collector has secured for Collector's Customers, and the contractual

arrangement that exists between Collector and the owners of the disposal and processing facilities that Collector proposes to utilize. Collector shall identify the expiration date of any such contractual arrangements, the options for renewing the terms of these contractual arrangements, and the conditions under which these contractual arrangements could be terminated prior to the expiration dates either by Collector or the owners of these facilities.

- (3) Contingency plans Collector has made in the event that the facilities Collector proposes to use or is currently using for disposal or processing of Solid Waste are not available to Collector.
 - (4) The methods, processes, and programs that Collector will employ to maintain the Minimum Waste Diversion Rate specified in this Agreement.
- B. The plan and all updates must be acceptable to City; Collector shall consider all comments of City staff on the proposed plans.
 - C. Collector shall deliver Solid Waste and Recyclables collected pursuant to this Agreement solely to the landfill and processing facilities listed in the Waste Disposal and Diversion Plan submitted to City, unless Collector first notifies City of a proposed additional or alternate landfill or facility to be used.
 - D. If at any time the plan submitted by Collector fails to demonstrate that Collector has made provisions to provide secure disposal and processing capacity that is adequate to meet the waste disposal and processing needs of Collector's Customers for the one (1) year period commencing on July 1 of the year of submittal of the plan, City shall inform Collector that Collector's plan failed to demonstrate the availability of adequate disposal and processing capacity, and direct Collector to revise the plan and resubmit it to City within thirty (30) days. If Collector fails to submit an adequate plan by the date set forth in the Schedule for Submittals (Exhibit C), or fails to submit an adequate revised plan within thirty (30) days of being directed to do so by City, Collector shall be subject to liquidated damages as described in Exhibit D of this Agreement until such time that Collector submits a plan that demonstrates the availability of adequate disposal and processing capacity.

7.05 Diversion Requirement.

- A. Collector shall divert from landfills an amount necessary for City to achieve the legally mandated minimum of 50% diversion by CalRecycle ("Minimum Waste Diversion Rate"). Recycling of materials not collected by Collector shall be counted towards meeting this requirement. For the purposes of this Section 7.04, "diversion" shall include recycling, transformation, and other forms of converting solid waste into energy to the extent that such diversion is accepted by CalRecycle toward meeting City's diversion goal under AB 939. If CalRecycle increases the state-mandated Minimum Waste Diversion Rate from 50% diversion to a higher percentage, Collector and City shall negotiate in good faith an equitable increase in Collector's Service Rates.

- B. Collector shall calculate its Waste Diversion Rate each month and report this rate to City in a method and form reasonably specified by City. Collector acknowledges and agrees that the method and form specified by City and in effect as of the Effective Date is reasonable.
- C. Collector shall not utilize transformation or biomass conversion, as those terms are defined in Sections 40201 and 40106, respectively, of the California Public Resources Code, for more than the percentage of the total waste diversion that City is permitted under the Act to include in meeting the diversion requirement imposed thereby. Transformation and biomass conversion facilities utilized by Collector to report waste diversion to City shall meet the requirements of California Public Resources Code Sections 41783 and 41783.1.
- D. City reserves the right to require Collector to implement new or expanded programs in response to changes in state or federal laws or regulations. In such cases, Collector shall provide City with a written report which describes Collector's plan for achieving implementing the new or expanded programs and indicates how Collector's current service rates will be affected. If Collector proposes an increase in its current service rates, Collector shall provide City with verifiable documentation of its costs associated with the proposed implementation of the new or expanded programs. The City shall evaluate Collector's proposal and if City finds it acceptable and determines that an adjustment of Collector's service rates greater than that allowed in Section 5 of Exhibit A is justified, process an adjustment of Collector's Service Rates pursuant to Section 8.08 of this Agreement.

City may request that Collector provide additional information on its costs, or provide alternative proposals. Failure of Collector (i) to provide a proposal and adequate cost information within forty-five (45) days of a request therefor from City, or (ii) to provide additional information on its costs within fourteen (14) days of a request therefor from City, or (iii) to provide alternative proposals with supporting cost information within thirty (30) days of a request therefor from City, may subject Collector to liquidated damages as set forth in Exhibit D.

- E. For each calendar year that Collector fails to achieve the CalRecycle Minimum Waste Diversion Rate required by this Agreement, Collector shall pay to City liquidated damages as specified in Exhibit D of this Agreement. Failure of Collector to achieve the CalRecycle Minimum Waste Diversion Rate required by this Agreement for any two (2) consecutive years will be considered a material breach of this Agreement and may result in termination of this Agreement by City. Notwithstanding anything to the contrary contained in this Agreement, Collector will not be in breach of the CalRecycle Minimum Waste Diversion Rate requirement if Collector's failure to meet such CalRecycle Minimum Waste Diversion Rate arises primarily from an event or circumstance outside of Collector's exclusive control.
- F. Sorting of Solid Waste. If Collector utilizes a material recovery facility or similar type of recycling or processing facility to sort Solid Waste collected in the City for the purposes of recovering Recyclable Materials, Collector shall base its calculations of the amount of recyclable materials recovered from the Solid Waste sorted on the actual characteristics of the Solid Waste sorted. To

determine the characteristics of the waste sorted, Collector shall develop characterization profiles for each type of Solid Waste that is sorted, such as waste from single family dwelling units, multi-family dwelling units, Commercial Premises, and Construction and Demolition Debris.

These characterization profiles shall identify the components of each waste type, and shall be updated at least once every five (5) years or whenever City presents Collector with evidence of a significant change in the generation of Solid Waste in City. The plan and schedule for developing these characterization profiles shall be reviewed with City.

7.06 Customer Service Surveys. City may, at City's sole expense, conduct surveys to determine Customer satisfaction with Collector's performance under the terms of this Agreement. Collector shall provide assistance in the development of the survey. If, as a result of the survey, City determines that customer service quality required by this Agreement is not being maintained, the City Manager may require Collector to take appropriate action to bring such service to a level of compliance with this Agreement within a reasonable amount of time. Failure to bring such service to a level of compliance may result in a material breach of this Agreement. The results of such surveys shall be made available to Collector upon request.

7.07 Performance Reviews. City shall conduct an annual review of Collector's performance in relation to the requirements of this Agreement. Upon completion of the performance review, the City Manager shall submit a performance review report to the City Council. Such report to the City Council may include a public hearing during which Customers may voice their complaints and compliments regarding Collector's provision of Collection Services. Reasons for a negative performance review may consist of noncompliance with standards set out in Section 5.02F, failure of Collector to maintain the CalRecycle Minimum Waste Diversion Rate required by this Agreement, numerous unresolved complaints, excessive missed pickups without legitimate cause, or late or inaccurate reporting.

ARTICLE 8. SERVICE RATES

8.01 Service Rates. The rates charged to Customers are set by Collector. Under this Agreement, Collector shall have the right and obligation to charge and collect from Customers the rates set by Collector, which rates shall not exceed the City-approved Service Rates. The initial Service Rates are set forth in Exhibit A, attached hereto and incorporated herein by this reference, and shall be adjusted in accordance with this Article 8 and Exhibit A.

8.02 Senior Rate Discounts. Collector shall continue to implement a Senior Rate Discount program. This program shall consist of a ten percent (10%) discount on the Net Service Rates, and shall be provided to senior citizen Residential Customers aged sixty-five (65) or over who request such a discount, and who receive a billing statement directly from Collector for Collection Services. The Senior Rate Discount is shown on Exhibit A. This Senior Rate Discount shall only apply to charges for weekly Standard Solid Waste Services. Senior citizen Residential Customers may request a Senior Rate Discount either by phone or in writing.

8.03 Service Rates for 30-gallon Service. Net Service Rates for those Residential Customers receiving 30-gallon Service shall be eighty-five percent (85%) of the Net Service Rate for corresponding 60-gallon service.

8.04 Rate Adjustments. The maximum permissible Service Rates set forth in Exhibit A shall be adjusted, up or down, according to the rate adjustment formulas and other provisions set forth in Exhibit A.

8.05 Extraordinary Cost Rate Adjustments. In addition to the annual rate adjustments set forth in Exhibit A, Collector shall be entitled to reasonable rate adjustments to compensate Collector for significant cost increases due to changes in federal, state, or local laws that were unforeseen and were not within the reasonable control of Collector. Strictly as an example, and without limiting the foregoing, an increase in the applicable minimum wage, other than annual indexing as may be provided by law, would constitute grounds for an extraordinary cost rate adjustment.

Collector shall submit documentation supporting any extraordinary cost rate adjustment in writing to the City Manager, including the basis for all calculations and all proposed new Service Rates. Collector and City shall mutually agree on a consultant that is a certified public accountant to review Collector's documentation solely to determine the reasonableness of the proposed new Service Rates. The City Manager shall take action on Collector's requested rate adjustment, recommending approval to the City Council, not later than thirty (30) days after receiving the request for an extraordinary cost rate adjustment. Failure by the City Manager to undertake such action may result in a Notice of Appeal to Arbitrator by Collector pursuant to Section 12.04. Any rate adjustment approved by the Monrovia City Council as a result of the extraordinary cost rate adjustment request shall take effect two (2) weeks following the City Council's approval or beginning with the next calendar month commencing after City Council's approval of the proposed rate adjustment, whichever is later, unless otherwise agreed upon by City and Collector and noted in the approving resolution.

8.06 AB1826 Organics Waste Program Surcharge. The parties acknowledge and agree that the rate of the AB1826 Organics Waste Program Surcharge set forth in Exhibit A was negotiated and agreed upon based upon the program developed between Collector and City for AB1826 compliance and other Recycling programs as are currently

implemented, and the parties' estimates of Collector's costs related thereto. If at any time Collector's costs of compliance with AB1826 exceed the anticipated costs of compliance with AB1826, the parties agree to meet and confer and to negotiate in good faith to establish an appropriate increase (but not a decrease) in the rate of the AB1826 Organics Waste Program Surcharge to remedy the unanticipated costs related to Collector's costs of compliance with AB1826.

8.07 San Bernardino County Landfills. The parties acknowledge and agree that the maximum permissible Service Rates set forth in Exhibit A were negotiated and agreed based upon Collector's existing contract to utilize the San Bernardino County facilities for disposal of Solid Waste collected that is not diverted from disposal. Upon determination of the termination date for such existing contract, the parties agree to meet and confer and to negotiate in good faith, commencing at least one (1) year prior to such termination date, to establish an appropriate adjustment formula for any increased costs related to Collector's use of alternative facilities.

8.08 Special Rate Review. In addition to the annual rate adjustments set forth in Exhibit A, Collector may apply to the City Council for consideration of a special rate review should an event or circumstance arise which results in a significant increase in cost of operations by Collector. Collector and City agree that the cost of purchasing replacement vehicles, bins, or containers in the normal course of business shall not be grounds for a special rate review. A special application will be considered by the City Council and shall not be unreasonably denied if Collector demonstrates one of the following:

- (1) An event or circumstance occurred which was not foreseen, and is extraordinary and not a usual business risk.
- (2) An event or circumstance occurred that is beyond the control of Collector.
- (3) It is necessary to make a substantial change in Collector's operation, or substantial capital investment in order to perform Collector's obligations under this Agreement or meet the requirements of applicable law or regulation.

Any request by Collector for a special rate review must be submitted in writing to the City Manager. Special rate review adjustment requests, if submitted, shall include the basis for all calculations, and shall set forth all proposed new Service Rates. The City Manager shall take action on Collector's requested rate adjustment, whether recommending approval or disapproval to the City Council, not later than thirty (30) days after receiving the request for special rate review. Failure by the City Manager to undertake such action may result in a Notice of Appeal to Arbitrator by Collector pursuant to Section 12.04. Any rate adjustment approved by the Monrovia City Council as a result of the special rate review shall take effect two (2) weeks following the City Council's approval or beginning with the next calendar month commencing after City Council's approval of the proposed rate adjustment, whichever is later, unless otherwise agreed upon by City and Collector and noted in the approving resolution.

ARTICLE 9. RECORDS AND REPORTS

9.01 Records Retention. Collector shall maintain, during the Term of this Agreement, and for five (5) years thereafter, complete and accurate waste disposal and diversion/recycling reports, landfill gate receipts, and financial and accounting records pertaining to cash, billing and disposal transactions, prepared on an accrual basis in accordance with generally accepted accounting principles. Nothing in this Agreement shall be deemed to interfere with any legal requirement that such records be kept for a longer period of time. Collector shall not destroy or discard any records pertaining to this Agreement without first giving notice to City and affording City the opportunity to copy or microfilm such records, at City's expense.

9.02 Monthly Reports. Not later than thirty (30) calendar days after the last day of each month, Collector shall submit a Monthly Report to City. The Monthly Report shall be in a form and method specified by City, and shall include the following information for the month which is the subject of the Monthly Report:

- (1) Quantities Collected and Recovered. The quantities by weight of Solid Waste, source separated Green Waste, source-separated Recyclable Materials, Recyclable Materials recovered from commingled loads, reported by source (Single Family, Multi-family, City Facilities, Commercial).
- (2) Disposal Facilities Used. Each disposal facility used during the month with tonnage, by category, taken to each.
- (3) Recyclable Processing Facilities Used. Each processing site used during the month and the tonnage taken by Collector to each, the amount of Recyclable Materials recovered from the tonnage, and the amount and final disposition of any materials remaining from the tonnage.
- (4) Recycling Participation. Customer participation rates for recycling programs.
- (5) Household Hazardous Waste. Hazardous Waste inadvertently collected, including Customer address (if known), quantity and type of material, and final disposition of Hazardous Waste.
- (6) Bulky Items. The total number of Bulky Items collected from Customers, and those collected from the public rights-of-way at the request of City. The number of items containing chlorofluorocarbons shall be specified.
- (7) Customer Service Log Summary Report. Summary report of the Customer Service Log, as required by Section 5.02G(4), in a format acceptable to City.
- (8) Gross Revenues. The total Gross Revenues received by Collector for providing Collection Services under the terms of this Agreement during the preceding month, segregated by Commercial Services, Standard Collection Services and Non-Standard Collection Services, with the latter further segregated by type of service. Collector shall report Gross

Revenues to City in the Monthly Report, regardless of whether or not a quarterly, bi-monthly or monthly billing and collection system is used.

- (9) Number of each type of Standard and Non-Standard Collection Services provided during the previous month.
- (10) Details on the amount of Electronic Waste collected, as described in Section 5.02K(4).

9.03 Cooperation With Studies and Surveys. If, during the Term of this Agreement, City commissions or elects to participate in a study to examine waste related issues or Collector's level of customer service, Collector agrees to cooperate fully and to provide all information deemed necessary by the City Manager, except that Collector shall not be required to produce for such studies confidential financial information or information concerning Collector's internal operations.

9.04 Audit of Collector's Books and Records. City and Collector must mutually agree on a consultant that is a certified public accountant for purposes of this Section 9.04. City, and any consultant(s) engaged by City for this purpose, shall have the right, upon written notice, to review any and all documents relating to Collector's operational performance of and Gross Revenues for Collection Services under terms of this Agreement. Collector shall have no obligation to provide any confidential information to any consultant engaged by City for this purpose unless the consultant first executes a confidentiality agreement with Collector, substantially in the form attached hereto as Exhibit E.

9.05 Schedule of Submittals. Attached hereto as Exhibit C is a schedule ("Schedule of Submittals") detailing various documents and reports required of Collector under this Agreement. The Schedule of Submittals is provided for ease of reference; in the event of any conflict between the text of this Agreement and the Schedule of Submittals, the text in the body of this Agreement shall control.

9.06 Public Records Requests. City shall notify Collector as soon as practical if City receives a request to review or copy material that Collector has marked "Trade Secret", "Confidential", or "Proprietary". In such an event, Collector may present arguments or facts to City in support of Collector's position that the material is exempt from disclosure under the California Public Records Act and therefore should not be released.

- A. If City determines that the material is not exempt from disclosure and that it must be released, Collector may seek a court order enjoining that release. City shall not be responsible for Collector's costs associated with seeking or pursuing such a court order.
- B. If City determines that the material is exempt from disclosure and the party who requested the material files a legal action seeking release of the material, Collector shall either file a motion to intervene in the action or shall accept the release of the material by City. If a legal action is filed seeking release of the material, City shall have no obligation to defend the action and may release the material requested without liability to Collector.
- C. Collector shall indemnify and hold City harmless from any claims of damages made by or brought against Collector as a result of release of the material.

- D. Collector shall reimburse City's costs incurred as a result of any public records request for Collector's trade secret, confidential, or proprietary material within thirty (30) days of receiving a statement of City's costs.

ARTICLE 10. FRANCHISE FEES

- 10.01 Residential Franchise Fee Amount. In consideration of the Exclusive Residential Franchise rights granted to Collector pursuant to this Agreement, and to partially offset City's expenses in administering its Solid Waste program, Collector shall bill to and collect from Customers, and pay to City, a fee in an amount equal to: (a) the Residential Franchise Fee for Collection Services to Residential Premises, excluding Multi-Family Collection Services, calculated in accordance with Section 5 of Exhibit A; plus (b) a per unit amount for all units that receive Multi-Family Collection Services, calculated in accordance with Section 5 of Exhibit A (collectively, the "Residential Franchise Fee").
- 10.02 Commercial Franchise Fee Amount. In consideration of the Exclusive Commercial Franchise rights granted to Collector pursuant to this Agreement, and to partially offset City's expenses in administering its Solid Waste program, Collector shall bill to and collect from Customers, and pay to City, a fee in an amount equal to the Commercial Franchise Fee for Collection Services to Commercial Premises, calculated in accordance with Section 5 of Exhibit A (the "Commercial Franchise Fee" and, together with the Residential Franchise Fee, "Franchise Fee").
- 10.03 Payment of Franchise Fees to City. Collector shall pay the Franchise Fee to City not later than thirty (30) days after the close of the month, throughout the Term. Payment shall reflect Gross Revenues received the immediately preceding calendar month. Each such payment shall be accompanied by an accounting form, in a format acceptable to the City Manager that (a) sets forth Collector's Gross Revenues collected for the preceding calendar month, and (b) demonstrates the calculations in Section 4 of Exhibit A. The accounting form shall be signed by an officer of Collector, and shall include the following statement: "I hereby certify under penalty of perjury that the above information is correct and the fee calculations are true to the best of my knowledge". City shall have the right to assess liquidated damages of \$250 per day for Franchise Fees submitted more than thirty (30) calendar days following the end of each month (except to the extent that such delay is due to Uncontrollable Circumstances), pursuant to Section 12.06.
- 10.04 Disputes. In the event of a dispute between Collector and City with respect to fees described in this Article 10, City shall provide Collector with written objection within one hundred eighty (180) days of the date on which the fee was due. City's written objection shall provide all reasons then known to City for its objection to or disagreement with the amount. Collector shall respond to City's written objection, in writing, within fifteen (15) days. If any disputed amount is adjusted in City's favor pursuant to agreement, mediation, or otherwise, Collector shall pay the amount of such adjustment to City, with an interest rate of eight percent (8%) per annum from the date such disputed amount was due City to the date of payment in full of such amount.

ARTICLE 11. INDEMNITY, INSURANCE.

11.01 General Provisions.

- A. To the fullest extent permitted by law, Collector shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, agents, employees and designated volunteers (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, judgments and penalties, including reasonable fees and costs of attorneys and experts (collectively "Liabilities") which arise out of or result from the acts or omissions of Collector, its officers, agents, servants, employees or subcontractors in the performance of this Agreement, except for Liabilities arising from the sole negligence or willful acts of the Indemnitees. Collector shall defend and indemnify the Indemnitees in any action or actions filed in connection with any Liability with counsel of the Collector's choice who is reasonably acceptable to such Indemnitees.

The duty of Collector to protect, defend, indemnify and hold City harmless pursuant to this Section 11.01 shall include, but shall not be limited to the following:

- (1) Claims arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste in any Solid Waste collected by Collector pursuant to this Agreement which is or has been transported, transferred, processed, stored, disposed or which otherwise has come to be located by Collector, or its activities pursuant to this Agreement result in a release of a Hazardous Waste into the environment. The maximum liability of Collector to City under this Section 11.01A(1) shall be \$5,500,000.00. This amount shall annually increase by the CPI Change for each year of the Term of this Agreement.
- (2) With respect to Solid Waste collected by Collector pursuant to this Agreement which has been disposed of at places not owned or operated by Collector, Collector (1) shall protect, defend, indemnify and hold the City harmless, as provided in, and subject to the limitations of Section 11.01A(1), above, or (2) cause the owner or operator of the disposal facility to deliver a Hazardous Substances Indemnification if satisfactory to City; or (3) provide any combination of indemnification by the disposal facility and indemnification by Collector satisfactory to City.

This Section 11.01 is intended to be an indemnity agreement pursuant to Section 107(e) of CERCLA and California Health and Safety Code Section 25364 to defend, protect, hold harmless and indemnify from all forms of liability under CERCLA, RCRA or other similar federal, state or local laws or regulations, and the common law, for any and all matters addressed in this Section 11.01.

- B. Collector shall pay all required taxes that are obligations of Collector on amounts paid to Collector under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest that are obligations

of Collector asserted against City by reason of the independent contractor relationship created by this Agreement. Collector shall fully comply with the Workers' Compensation law regarding Collector and Collector's employees. Collector shall indemnify and hold City harmless from any failure of Collector to comply with applicable Workers' Compensation laws.

- C. Insurance Requirements not Limiting. City does not waive any rights that it may possess against Collector because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 11.01 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability asserted against City.
- D. **THIS SECTION 11.01 SHALL SURVIVE THE EXPIRATION OF THE PERIOD DURING WHICH COLLECTION SERVICES ARE TO BE PROVIDED PURSUANT TO THIS AGREEMENT.**

11.02 Insurance.

- A. Minimum Scope and Limits of Insurance. Collector shall procure and at all times during the Term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:
 - (1) A Broad Form Comprehensive Commercial General Liability (occurrence) policy (form CG 0001 or its equivalent), with minimum limits of \$5,000,000 aggregate and \$5,000,000 per occurrence, per year.
 - (2) An Insurance Services Office form number CA 0001 (Ed. 1/87 or its equivalent) covering Automobile Liability, including Code 1 (any auto) and endorsement CA 0025, with minimum limits of \$2,000,000 aggregate and \$2,000,000 per occurrence, per year.
 - (3) The minimum limits of the Commercial General and Automobile Liability policies shall be increased annually on the anniversary of the Effective Date of this Agreement by an amount which is equal to the then minimum limit times the CPI Change. The amount shall not be reduced lower than the amount that is set forth above.
 - (4) Workers' compensation insurance as required by the State of California.
 - (5) Employer's Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000) per accident for bodily injury or disease.
- B. Acceptability of Insurers. The insurance policies required under this Section 11.02 shall be issued by an insurer authorized to write insurance in the State of California with a rating of A-VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance may be considered to comply with the insurance requirements subject to the provisions set forth in Section 11.02F below.

- C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming the City, its officers, employees, agents and volunteers as additional insureds.
- D. Primary and Non-Contributing. The insurance policies required under this Section 11.02 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Collector's insurance and shall not contribute with it.
- E. Collector's Waiver of Subrogation. The insurance policies required under this Section 11.02 shall not prohibit Collector and Collector's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Collector hereby waives all rights of subrogation against City.
- F. Deductibles and Self-Insured Retentions. Proof of any deductibles for non-admitted carriers shall be provided to City. Self-insured retentions must be approved by City. At City's option, Collector shall either reduce or eliminate any self-insured retentions with respect to City, or Collector shall procure a bond guaranteeing payment of losses and expenses.
- G. Cancellations or Modifications to Coverage. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) days' prior written notice to City. If any insurance policy required under this Section 11.02 is canceled, or reduced in coverage or limits to a level below that required by this Agreement, Collector shall, within ten (10) Working Days of notice from the insurer, notify City via both fax and certified mail, return receipt requested, of the cancellation of or changes to the policy. Such notice shall be sent to both the City Manager, City Clerk and City's Risk Manager.
- H. City Remedy for Noncompliance. In addition to the remedies set forth in Article 11 of this Agreement, if Collector does not maintain the policies of insurance required under this Section 11.02 in full force and effect during the term of this Agreement, or in the event any of Collector's policies do not comply with the requirements under this Section 11.02, City may, if insurance is available at a reasonable cost, but has no duty to, take out the necessary insurance and pay, at Collector's expense, the premium thereon. Collector shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Collector.
- I. Evidence of Insurance. Prior to the performance of services under this Agreement, Collector shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 11.02. The endorsements are subject to City's approval. If requested by City, Collector shall provide complete, certified copies of all required insurance policies to City. Collector shall maintain current endorsements on file with City's Risk Manager. Collector shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least

the same coverage. Collector shall furnish such proof at least two (2) Working Days prior to the expiration of the coverages. In addition, City shall have the right of inspection of all insurance policies required by this Agreement. Collector shall notify City's Risk Manager and City Attorney before destroying copies of such policies. This provision shall survive the termination or expiration of this Agreement.

- J. Indemnity Requirements not Limiting. Procurement of insurance by Collector shall not be construed as a limitation of Collector's liability or as full performance of Collector's duty to indemnify City under Section 11.01 of this Agreement.
- K. Subcontractor Insurance Requirements. Collector shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 11.02.

ARTICLE 12. MATERIAL BREACHES AND REMEDIES

12.01 Material Breaches. Material breaches shall include, but shall not be limited to, the following:

- A. Non-Compliance. The failure or refusal of Collector to perform, or the unsatisfactory performance of any material term, covenant, duty, obligation or condition contained in this Agreement, including, without limitation:
- (1) Collection of Solid Waste. Failure to make regular collections of Solid Waste, Green Waste and Recyclable Materials, as required by this Agreement.
 - (2) Payment of Fees. Non-payment of Franchise Fees or other fees owed by Collector to the City, or the continuing late payment of Franchise Fees to the City beyond the date specified in Section 10.03.
 - (3) Reporting. Collector failure or refusal to file any required report at the time and place designated, or inclusion of any materially false or misleading information.
 - (4) Failure to Provide Insurance. Failure to provide, maintain or replenish within five (5) Working Days the required insurance required by this Agreement, or to meet any of the indemnification requirements of this Agreement.
 - (5) Full Disclosure. Failure to disclose fully information material to the performance of this Agreement, including but not limited to the reporting information required by Article 9 of this Agreement. Both parties agree and understand that any failure to disclose information material to the performance of this Agreement shall constitute a material breach.
 - (6) Failure to Comply with Law. Failure of Collector to comply with applicable state, federal and local law.
 - (7) Customer Service. Failure to provide services required by this Agreement, including, but not limited to the standards specified in Section 5.02F, including, but not limited to repeated, unresolved disputes over billing and collections or other customer service complaints.
 - (8) Waste Disposal and Diversion Plan. Failure to submit acceptable annual updates of Collector's Waste Disposal and Diversion Plan as required by Section 7.04A, or submission of updates that are incomplete.
 - (9) Repeated Violations. Repeated material violations of the provisions of this Agreement, subject to the cure provisions of Section 12.03.
- B. False Representation. Any material representation, report, statement or disclosure made to City by Collector in connection with or as an inducement to entering into this Agreement or any future amendment or rate adjustment to this Agreement, which is false or misleading in any material respect at the time such

representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

- C. Seizure. Any seizure or attachment (other than a prejudgment attachment) of, or levy, materially affecting Collector's possession of its operating assets, including without limit its vehicles, maintenance or office facilities, or any part thereof, which is not released, bonded, or otherwise lifted within forty-eight (48) hours excepting weekends and holidays; which is of such proportion as to impair substantially Collector's ability to perform under this Agreement.
- D. Insolvency. The filing by or against Collector of a petition for relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law, which City determines has created a substantial risk that Collector will be unable to perform all its duties and obligations under this Agreement. In making this determination, City shall consider whatever, if any, assurances and evidence of ability to perform all its duties and obligations under this Agreement which Collector may submit to City, in response to notice provided to Collector by City.
- E. Court Resolution. Entry by a court having jurisdiction of a decree or order for relief in respect of Collector, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, and which would create a substantial risk that Collector will be unable to perform all its duties and obligations under this Agreement.
- F. Unauthorized Transfer. Any Transfer or assignment of rights or obligations from Collector to any other except as provided by Section 13.02 of this Agreement.
- G. Failure to Meet Diversion Goals. Any failure by Collector to meet the diversion requirements provided in this Agreement for two consecutive years or more, subject to Section 7.05E.

12.02 Force Majeure. Notwithstanding anything to the contrary in this Agreement, Collector shall not be in default under this Agreement in the event that the collection, transportation and/or disposal services of Collector are interrupted temporarily or permanently due to Uncontrollable Circumstances.

12.03 Notice of Breach; Cure.

- A. Breaches Not Endangering Public Health, Welfare or Safety. In the event of a material breach by Collector that the City Manager determines does not create an imminent danger to public health, welfare or safety, the City Manager shall provide written notice to Collector of the specific instances believed to constitute a material breach. Collector shall have fifteen (15) calendar days from the date of receipt of the written notice to provide notice to City of Collector's intent to cure the material breach, and the time by which cure (which may include the payment of money damages to City) is to be accomplished. In the absence of exceptional circumstances, cure shall be accomplished not later than thirty (30) days from receipt of notice of material breach. In the event that Collector agrees that a material breach has occurred, but asserts that cure of the material breach is not reasonably possible within thirty (30) days, then Collector may submit, in writing, a statement of reasons why cure is not reasonably possible within thirty (30) days

and request additional time to fully cure the material breach. In the event that Collector believes that no material breach has occurred, Collector shall provide written notice to City within fifteen (15) days, with a statement of reasons why Collector believes that no material breach has occurred. The notice shall be accompanied by all evidence, which may be in the form of affidavits, photographs, diagrams or any other form, which Collector desires to have considered by City (and, in the event of arbitration pursuant to Section 12.04 of this Agreement, by an arbitrator).

- B. Breaches Endangering Public Health, Welfare or Safety. In the event of a material breach by Collector, which, in the opinion of the City Manager, creates an imminent danger to public health, welfare or safety, the City Manager shall provide written notice to Collector of the specific instances believed to constitute a material breach that has created an imminent danger to public health, welfare or safety. Collector shall take immediate steps to cure the material breach which is alleged to have created an imminent danger to public health, welfare or safety and shall provide notice to City of the cure. In the event that Collector believes that no material breach has occurred, Collector shall reply immediately (and in no event later than five (5) calendar days) in writing, with a statement of reasons why Collector believes that no material breach has occurred and that there is no imminent danger to public health, welfare or safety. The statement shall be accompanied by all evidence, which may be in the form of affidavits, photographs, diagrams or any other form, which Collector desires to have considered by City (and, in the event of arbitration pursuant to Section 12.04 of this Agreement, by an arbitrator).
- C. City's Additional Remedy. In addition to the remedies set forth above, if Collector refuses or is unable for a period of time more than seventy-two (72) hours, to collect, transport and dispose of any or all of the Solid Waste, Green Waste and Recyclable Materials which it is obligated under this Agreement to collect, transport and dispose of and if, as a result thereof, Solid Waste, Green Waste and Recyclable Materials accumulate in City to such an extent, in such a manner, or for such a time that the City Manager finds that such accumulation endangers or menaces the public health, welfare or safety, then City shall have the right to license or contract with others to perform the services otherwise to be performed by Collector, hereunder, or to perform the services itself, and to charge Collector for all costs incurred by City as a result thereof.
- D. City Council Hearing; Determination. In the event that the City Manager rejects Collector's written statement that it believes no material breach, whether endangering or not endangering public health, welfare or safety, has occurred, then the City Manager shall refer the matter to the City Council for consideration of assessment of liquidated damages or termination of this Agreement. Prior to the City Council's public hearing, Collector may file a written "Notice of Appeal" with the Office of the City Clerk. This notice shall include Collector's formal position regarding the existence of material breaches, as specified by the City Manager. The City Council will set the matter for public hearing and act on the matter, or refer the matter directly to an arbitrator, as provided in Section 12.04. Should the City Council elect to proceed with the public hearing, the City Council shall consider the administrative record, which shall include:

- (1) A staff report by the City Manager summarizing the proceedings to date and outlining the City Council's options;
- (2) The City Manager's written notices of breach;
- (3) Collector's response of the City Manager's notices of breach;
- (4) Collector's Notice of Appeal to the City Clerk.

If the City Council's determination results in an adverse decision for Collector, then Collector may file a written "Notice of Appeal to Arbitrator" with the Office of the City Clerk. This notice shall serve as Collector's formal request to proceed with binding arbitration with respect to the alleged material breaches.

12.04 Binding Third-Party Arbitration.

- A. General. It is understood and agreed by City and Collector that at no time during the Term of this Agreement shall either party bring or sustain any legal action, suit or other proceeding, at law or in equity, before any civil court arising under the provisions of this Agreement. Any such damages or claims arising out of City's grant of this Exclusive Residential Franchise and Exclusive Commercial Franchise, or Collector's acceptance of these franchises, or any failure or refusal of Collector to perform, or the unsatisfactory performance of, any material term, covenant, duty, obligation or condition contained in this Agreement, including any disputes as to alleged material breaches, shall be settled through binding third-party arbitration. During the Term of this Agreement, should such a claim for damages arise, then Collector and City shall submit to binding arbitration in accordance with the "Commercial Arbitration Rules" of the American Arbitration Association. Collector agrees that the evidence to be considered on Collector's behalf in any arbitration as to alleged material breaches shall be limited to the evidence submitted by Collector to the City Manager in response to City's notice of material breach, as provided by Section 12.03, above. A decision of the City Council regarding Rate adjustments is not subject to appeal by Collector to an arbitrator.
- B. Selection of Arbitrator; Venue. Upon the City Council's direction to proceed with arbitration, the City Attorney shall produce a list of ten (10) arbitrators, who shall be retired judges, expert in the "Commercial Arbitration Rules" of the American Arbitration Association. The City Manager shall direct Collector to provide a similar list. If the parties are unable to agree on an arbitrator within ten (10) Working Days after written request to do so by either of the parties, then the parties shall defer to the provisions of the California Code of Civil Procedure Section 1281. The venue for any proceeding hereunder shall be Los Angeles County, California.
- C. Ex Parte Communications Prohibited. Neither party may communicate separately with the arbitrator after the arbitrator has been selected. All communications shall be simultaneously delivered to the other party.
- D. Conduct of Hearing. The hearing shall be conducted according to California Code of Civil Procedure Section 1280 *et seq.* The non-prevailing party in the

arbitration shall be liable for payment of the arbitrator's fee. The hearing shall be conducted no later than sixty (60) days after selection of the arbitrator, unless the parties and the arbitrator otherwise agree.

- E. Remedial Authority. An arbitrator to whom a matter is referred shall have the authority to affirm, reverse, or modify the decision of the City Council. In addition, the arbitrator may (1) order either party to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future, (2) assess damages and/or levy a penalty consistent with the terms of this Agreement, or (3) find there has or has not been a breach.
- F. Allocation of Arbitrator's Costs. The arbitrator's costs for the proceeding shall be apportioned by the arbitrator. The cost of the proceeding shall be borne equally by the parties to the dispute initially, but the prevailing party in such proceeding shall be entitled to recover reasonable costs of the arbitrator as apportioned by the arbitrator. If either party refuses to pay its share of the costs of the proceeding at the time(s) required, the other party may do so, in which event that party will be entitled to recover (or offset) the amount advanced, with interest at the maximum rate permitted by law, even if that party is not the prevailing party. The arbitrator shall include such costs in the judgment of award.
- G. Decision. The decision of the arbitrator may be excepted to in accordance with California Code of Civil Procedure Section 1285.

12.05 Right to Terminate upon Material Breach; Waiver.

- A. Right to Terminate. Upon the occurrence of a material breach by Collector, and following the reply, cure, and arbitration processes detailed in this Article 12, City, in the exercise of its sole discretion, shall have the right to terminate this Agreement and revoke the Exclusive Residential Franchise and Exclusive Commercial Franchise, to determine that no material breach has occurred, or that a material breach has occurred but that the cure has resolved the matter.
- B. Waiver of Defenses. Subject to Uncontrollable Circumstances, Collector acknowledges that it is solely responsible for providing the Collection Services described herein, and hereby irrevocably and unconditionally waives the following defenses to the payment and performance of its covenants, duties and obligations under this Agreement: any defense based upon failure of consideration, contract of adhesion, impossibility or impracticability of performance, commercial frustration of purpose, or the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of Collector with regard to any provision of this Agreement.

12.06 Liquidated Damages. All time limits and acts required to be done by this Agreement are essential elements of the Agreement. Should Collector fail to perform or complete the work required to be done at the time set forth in this Agreement, it is mutually understood and agreed that City and the public will necessarily suffer damages and that such damages, from the nature of the default in performance will be extremely difficult and impractical to fix. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) damage may result to members of the public who are denied services or denied quality or

reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, which are incapable of measurement in precise monetary terms; (iii) the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

Therefore, without prejudice to City's right to treat such non-performance as an event of breach under this Article 12, the parties agree that the liquidated damages amounts established in Exhibit D represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and that proof of actual damages would be costly or impractical. Collector agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in Exhibit D.

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

City will notify Collector in writing that a breach or incidence of non-performance has occurred and indicate the amount of liquidated damages that are due to City. The notice will include a brief description of the incident(s) and non-performance. If Collector disputes the assessment of liquidated damages Collector may, within ten (10) calendar days after receipt of the notice request a meeting with the City Manager. Collector and City may present evidence in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. The City Manager will consider the evidence presented, and provide Collector with a written explanation of his or her determination on each incident(s) and non-performance. If the amount of liquidated damages alleged by the City is less than \$10,000, the decision of City Manager shall be final and Collector shall not have any further administrative remedies.

If Collector disputes the determination of the City Manager and the amount of liquidated damages alleged by the City is greater than or equal to \$10,000, Collector may, within ten (10) calendar days after receipt of the determination of the City Manager submit the dispute to an arbitrator pursuant to Section 12.04 of this Agreement. Notwithstanding Section 12.04, in the event of a referral to arbitration by Collector pursuant to this Section 12.06, Collector shall pay all costs of the arbitration, unless and until apportioned otherwise by the arbitrator. Collector and City may present evidence in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. The arbitrator will consider the evidence presented, and provide Collector and City with a written explanation of his or her determination on each incident(s) and non-performance. The decision of the arbitrator shall be final and Collector and City shall not have any further remedies.

If there is no dispute, Collector shall pay all liquidated damages within thirty (30) days of receiving a notice from City that such payments are due. If an appeal is made pursuant to this Section 12.06, and the decision of the City Manager or arbitrator, as the case may be, is adverse to Collector, Collector shall pay all liquidated damages within ten (10) days of receiving the written determination of the City Manager or arbitrator, as the case

may be. Failure of Collector to pay liquidated damages within the time periods specified in this paragraph may result in termination of this Agreement.

In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that this Agreement was made.

Collector _____
Initial Here

City _____
Initial Here

ARTICLE 13. GENERAL PROVISIONS

13.01 Compliance with Law.

- A. General. In providing the Collection Services required under this Agreement, Collector shall at all times, at its sole cost (except as otherwise provided in this Agreement), comply with all applicable laws of the United States, the State of California, County of Los Angeles and the City of Monrovia. Collector shall maintain compliance with the Monrovia Municipal Code, including but not limited to Chapter 8.08 and Chapter 8.10 (as they exist currently or as they may be subsequently amended), and with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term. City shall notify Collector of any changes, modifications or amendments to the Municipal Code that materially affect the circumstances under which the Exclusive Resident Franchise and Exclusive Commercial Franchise are granted.
- B. Solid Waste Facilities. As part of its obligations under this Agreement, Collector covenants that it shall transport all Solid Waste and Recyclable Materials collected pursuant to this Agreement to solid waste facilities (as defined in the Act) fully permitted under the guidelines of state, federal and local laws and regulations, which are in compliance with applicable law, and which are not being considered for inclusion on a state or federal Superfund list. Collector shall arrange for and secure proper disposal and processing of collected Solid Waste and Recyclable Materials at such facilities. All landfills utilized by Collector to dispose of Solid Waste under this Agreement must be properly permitted by the Regional Water Quality Board, and classified as a Class 3 landfill (landfills designated to receive only municipal Solid Waste).
- C. No Relief from Obligations. Nothing herein shall be construed to relieve Collector of any obligations imposed by applicable law, including, but not limited to, the Municipal Code. In the event of any inconsistency between the Municipal Code and this Agreement, the more stringent provision shall apply.

13.02 Transfer of Franchise. Any attempt by Collector to transfer, sell, hypothecate, sublet, or assign (collectively "Transfer") the Exclusive Residential Franchise, the Exclusive Commercial Franchise, or this Agreement must be approved by resolution by the Monrovia City Council. Additionally, any dissolution, merger, consolidation, reorganization or other change in control of Collector shall be deemed a Transfer of this Agreement requiring prior written approval, by City Council resolution. For purposes of this Agreement, a "change in control" shall mean a change in possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation, company, partnership, joint venture, or other association. If Collector should request City's permission to Transfer this Exclusive Residential Franchise or Exclusive Commercial Franchise to a qualified Solid Waste hauler, then Collector shall pay to City a transfer fee of \$50,000 in consideration for the reasonable grant of transfer of this Exclusive Residential Franchise or Exclusive Commercial Franchise. Such consideration shall be remitted to City along with Collector's written application to City requesting permission to transfer this Exclusive Residential Franchise or Exclusive Commercial Franchise, as detailed below. Should City reasonably deny the request for Transfer, or should the transaction not be consummated, then City shall refund not less than fifty percent (50%) of the above mentioned consideration. The following procedures apply to Transfers.

- A. Unauthorized Transfer. The franchises granted by this Agreement shall not be Transferred, nor shall any dissolution, merger, consolidation, change in control or other reorganization of Collector cause a Transfer of this Agreement, nor shall any of the rights, duties or privileges herein be Transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, either by act of Collector or by operation of law, without the prior written consent of City expressed in writing by resolution of the City Council, and any attempt to do any of the foregoing without the consent of City shall be void and shall constitute a non-curable material breach of this Agreement; provided, however, that no Transfer shall be deemed to have occurred, and no transfer fee shall be required, if the person who, or each person in the group of persons acting in concert that, acquires the interest is a father, mother, husband, wife, lineal descendant, sibling, niece, nephew, or first cousin of Ron Arakelian, Jr., or Michael Arakelian. For purposes of this Section 13.02, "lineal descendant" shall mean a child, grandchild, or great-grandchild, whether by birth or by adoption. For purposes of this Section 13.02, a change of corporate name only shall not be deemed to be a Transfer.
- B. City's Consent. City shall not unreasonably withhold its consent to a Transfer. The applicant for the Transfer shall demonstrate to City's satisfaction that it has the operational and financial ability and experience to carry out the obligations of this Agreement. City may impose reasonable conditions of approval on a Transfer, including full compliance with all provisions of this Agreement.
- C. Application. Any application for a Transfer shall be made in writing in a form acceptable to the City Manager.
- D. Encumbrances. Collector must obtain prior written approval, by City Council resolution in order to pledge, encumber, or grant any security interest in this Exclusive Residential Franchise or Exclusive Commercial Franchise.

13.03 Enforcement Costs. Subject to the indemnification provisions detailed in Article 11 and the binding arbitration provision detailed in Article 12 of this Agreement, Collector and City agree that all fees and expenses, including attorneys' fees and costs, incurred by or on behalf of either party in enforcing the terms, obligations, duties and covenants of this Agreement shall be the responsibility of each respective party.

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

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

If to City: City Manager
City of Monrovia
415 South Ivy Avenue
Monrovia, CA 91016-5107

If to Collector: Gary Clifford
Athens Services
P. O. Box 60009
City of Industry, CA 91716-0009

The address to which communications may be delivered may be changed from time to time by notice given in accordance with this Section 13.05.

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

13.06 Notice of Litigation. Each party shall deliver written notice to the other of any legal proceeding as to which it is a party which questions the validity or enforceability of this Agreement or any other related agreement executed by the or Collector or any legal entitlement issued in connection herewith, or Collector's alleged failure to comply with all laws governing the services to be provided by Collector pursuant to this Agreement. Notice shall be provided to the other party within five (5) days of receipt of information regarding a proceeding within the scope of this Section 13.06.

13.07 Title to Solid Waste, Green Waste and Recyclable Material. Title to all Solid Waste collected by Collector shall pass directly from the owner to Collector by operation of law and not as a result of this Agreement, City having no property right, or authority to determine property rights, in such Solid Waste.

13.08 Non-Discrimination. Collector shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex, sexual orientation or physical or mental disability.

13.09 Entire Agreement. This Agreement, including Exhibits A, B, C, D, E, F, and G, which by this reference are incorporated into this Agreement, represents the full and entire agreement between the parties with respect to the matters covered herein. Nothing in this Agreement is intended to confer on any person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

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

13.11 Construction. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa and the masculine gender includes the feminine and neuter and vice versa.

13.12 Calendar Days; Working Days. All references in this Agreement to a number of days in which either party shall have to consent, approve or perform shall mean calendar days unless specifically stated as Working Days.

13.13 Captions and References. The captions of the sections and sub-sections of this Agreement are solely for convenience of reference, and shall be disregarded in the construction and the interpretation of this Agreement. References herein to a section or sub-section are to the sections and sub-sections of this Agreement.

13.14 Time of the Essence. Time is of the essence with respect to this Agreement and each and every term and condition hereof.

13.15 Property Damage. Normal wear and tear from general vehicle traffic excepted, Collector shall be responsible for damage to streets, roads and ways in the City or any public property in the City, whether or not paved, resulting from the operation of Collector's collection vehicles providing Collection Services within the City. Any physical damage caused by the negligent or willful acts or omissions of employees of Collector to streets, roads and ways in the City or any public property in the City shall be repaired or replaced by Collector in compliance with City's standards and specifications, at Collector's sole expense.

13.16 Joint Drafting. Each party has cooperated in the drafting and preparation of this Agreement with the aid of legal counsel. Hence, in any construction to be made in this Agreement, it shall not be construed against either party.

13.17 Amendment. This Agreement may not be modified or amended in any respect except by a written amendment signed by both parties and approved by the Monrovia City Council, by resolution, and by Collector's Board of Directors.

13.18 Law to Govern. The laws of the State of California shall govern this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

CITY:

COLLECTOR:*

City of Monrovia,
a California municipal corporation

Arakelian Enterprises, Inc., dba Athens
Services,
a California corporation

By: _____

Name: Oliver Chi
Title: City Manager

By: _____

Name: _____
Its: _____

By: _____

Name: _____
Its: _____

ATTEST:

By: _____

Name: Alice D. Atkins, CMC
Title: City Clerk

APPROVED AS TO FORM:

By: _____

Name: Craig A. Steele
Title: City Attorney

***The signature(s) of Collector require notarization and shall be accompanied by a Resolution of the business authorizing the given signature.**

EXHIBIT B

RECYCLABLE MATERIALS

1. Newspapers (including inserts and coupons)
2. Glass jars and bottles
3. Cans (aluminum, bi-metal and tin cans)
4. Mixed paper (brown bags, cereal boxes, colored paper, computer paper, construction paper, cracker and cereal boxes, envelopes, junk mail, legal pad backings, paper egg cartons, shoe boxes, and white paper)
5. Telephone books
6. Magazines and catalogs
7. Corrugated cardboard
8. Chipboard
9. Aluminum foil and trays
10. Aerosol cans
11. Scrap metal
12. Plastic containers (1-7)
13. Plastic bags
14. Unpainted wood and lumber
15. Green waste

The foregoing list may be modified from time to time as City and Collector shall mutually agree, in writing, including but not limited to Food Waste, in response to changes in applicable law.