

Contractual Language for Rebate Incentive for C&D Haulers

6.03 Minimum Diversion Requirement.

a. Annual Compliance and Remedies

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

(2) Solid Waste Management Fee Reductions and Increases

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

(ii) Failing to meet Minimum Diversion Requirements: Fee Increases. If Contractor fails to meet either the Minimum Commercial Solid Waste Diversion Requirement or Minimum C&D Debris Diversion Requirement calculated with respect to any three months covered in each Quarterly Report, for each diversion percentage point or portion thereof *less* than the Minimum Commercial Solid Waste Diversion Requirement or Minimum C&D Debris Diversion Requirement, together with timely submission of its Quarterly Report Contractor will pay City an incremental Solid Waste Management Fee equal to the percentage of its gross Service Fees received for providing Refuse and Recyclables Collection Services, or C&D Debris Collection Services, respectively, as indicated on the tabled in paragraph (iii).

The Parties acknowledge that City has been the subject of a compliance order by the California Integrated Waste Management Board for failure to timely comply with AB 939, and the consequent agreement with the Board, and that City procured this Agreement for reasons including securing performance standards and obligations intended to help the City meet its AB 939 diversion obligations. Therefore compliance with the Minimum Diversion Requirement is of the utmost importance to the City, which faces fines of up to \$10,000 for noncompliance with AB 939. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable collection service, and if Contractor fails to meet the Minimum Diversion Requirement, it is and will be impracticable and extremely

difficult to ascertain and determine the value thereof. Therefore, the Parties agree that the above increases in Solid Waste Management Fee represent a reasonable estimate of the amount of the costs that might accrue to the City if Contractor does not meet the Minimum Diversion Requirement, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated, anticipation that proof of actual costs would be costly or inconvenient, and possible restrictions on Contractor's ability to indemnify City for fines payable for AB 939 noncompliance in accordance with Section 40059.1 of the California Public Resources Code, whether due to explicit provision of Section 40059.1 or uncertainty in enforcement thereof due to ambiguity of its terms or meaning, or otherwise. In signing this Agreement, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this provision at the time that this Agreement was made.

(iii)

Commercial Solid Waste diversion %	Solid Waste Management Fee reduction (-) or increase (+) %
40	-5
38	-4
36	-3
34	-2
32	-1
30	0
28	0
26	0
24	+1
22	+2
20	+3
18	+4
16	+5
14 or less	+6 and one additional percentage point for each two percentage points less than 14%

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

b. Measurement of Minimum Diversion Requirement.

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

Minimum Commercial Solid Waste Diversion Requirement = $100 \times \frac{\text{diverted Recyclables}}{\text{Collected Recyclables} + \text{Collected Refuse}}$.

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

Minimum C&D Debris Diversion Requirement = $100 \times \frac{\text{diverted C\&D Debris}}{\text{Collected C\&D Debris}}$.

c. Corroboration of Diversion.

(1) **AB 939 Reports.** The amount of diverted Recyclables and C&D Debris will be based upon Tons of those materials diverted by the Recyclables Processing Facility and C&D Debris Processing Facility, respectively, allocable to the City as may be reported by the Recyclables

Processing Facility and C&D Debris Processing Facility to the Integrated Waste Management Board in compliance with AB 939 reporting requirements. Conversely, the City may calculate or direct Contractor to calculate the amount of diverted Tons based upon Tons of residual remaining after processing of Recyclables allocable to the City, as so reported.

(2) Primary Source Documentation. Alternatively, the City may calculate, or direct Contractor to calculate, the amount of diverted Recyclables and C&D Debris, based upon Tons of those materials diverted by the Recyclables Processing Facility and C&D Debris Processing Facility, respectively, as corroborated by written documentation provided by the Recyclables Processing Facility and C&D Debris Processing Facility that may serve as the basis of the AB 939 reports described in paragraph (1), acceptable to City, including: weigh tickets; invoices; bills of lading; and receipts from Recyclables and C&D Debris transporters, shippers, brokers, beneficiaries, remanufacturers and purchasers or other users.

Documentation is subject to adjustment in accordance with subsection e, in the event of commingling. Contractor will provide City with copies of documentation within 7 days of City's direction.

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

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

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

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

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

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

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

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

(1) Excess Payments. Contractor may apply any excess Solid Waste Management Fee to future Solid Waste Management Fees, or if the Term is expiring or Contractor is no longer providing service in the City, Contractor may request that the City reimburse the dollar amount of the excess.

(2) Deficit payments. Contractor will pay City any additional Solid Waste Management Fees together with timely submission of the Annual Report. Failure to timely pay any Solid Waste Management Fee is an Event of Default, and City may, among other remedies, draw on the performance bond, letter of credit, Guaranty or other performance assurance provided by Contractor in accordance with Article 11.