CONTRACT # 9959

STATE OF NORTH CAROLINA
CITY OF DURHAM

CONTRACT BETWEEN THE
CITY OF DURHAM AND OTTO CONTAINER MANAGEMENT, LLC
FOR ROLL OUT CART SERVICES
AND
AGREEMENT BETWEEN THE CITY OF DURHAM AND OTTO
ENVIRONMENTAL SYSTEMS (NC), LLC
FOR ONE-TIME RENTAL CART BUY-OUT

CONTRACT FOR ROLL OUT CART SERVICES and the AGREEMENT BETWEEN THE CITY OF DURHAM AND OTTO ENVIRONMENTAL SYSTEMS (NC), LLC FOR ONE-TIME RENTAL CART BUY-OUT (the "Cart Buy-Out Agreement") is made a effective as of the 6th day of August, 2012, by the City of Durham, a North Carolina municipal corporation (hereafter "City") and Otto Container Management, LLC, (hereafter "Contractor"), a limited liability company organized and existing under the laws of Delaware, with its principal place of business at 12700 General Drive, Charlotte, North Carolina 28273.

Section 1. Background and Purpose. The City provides 65 and 95 gallon roll-out carts to households receiving solid waste collection and recycling curbside services once per week. The City currently has approximately 93,000 existing carts in circulation. The City and Contractor entered into a five-year contract as of the 17th of July, 2008 ("Initial Contract") by which the Contractor would lease, maintain, repair, and deliver carts for the City of Durham. At the time of the making of the Initial Contract, the City had 157,500 roll-out carts in circulation. In July 2010, the Initial Contract was amended (Amendment #1) to add an additional 67,000 roll-out carts into circulation for the purpose of providing single-stream recycling collection services to the citizens of Durham. The Initial Contract is due to expire June 30, 2013. The Contractor has performed and continues to perform the services under the Initial Contract.

The City and the Contractor desire to change their relationship so that the Contractor will cease renting roll out containers to the City and will provide cart maintenance, repair and delivery services for the City of Durham. The Initial Contract will be terminated and superseded by this Contract on this Contract's effective date.

The City and the Contractor also desire to enter into this additional one-time Rental Cart Buy-Out Agreement by which the City will buy all of the residential trash cart currently in circulation and pursuant to the summary and pricing set forth in Exhibit A – Cart Buy-Out Agreement.

The following Sections 2 through 14 apply solely to the Roll-Out Cart Services Contract.

Section 2. Services and Scope to be Performed. The Contractor will provide the required labor, materials, equipment, insurance, and supervision to execute the provisions of **Exhibit B – Scope of Services for Maintenance, Repair, Replacement and Distribution of Roll-Out Carts.** In this contract, "Services" means the work that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract.

Section 3. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the

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City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Services.

Section 4. Contingency. The performance of this Agreement is contingent upon the signing of the **Cart Buy-Out Agreement,** for which a summary of the terms is attached hereto as Exhibit A.

Section 5. Compensation. During the term of this contract, Contractor shall be compensated for the Services performed as specified in **Exhibit C – Compensation**.

Section 6. Contractor's Billings to City. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall be accompanied by a progress report, which shall provide such information as is reasonably required by the City.

Within thirty (30) business days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

Section 7. Term. The term of this Roll-Out Cart Services Contract shall be three years. The City shall have the option to renew the contract for an additional one-year term, and the City Manager is authorized to exercise this option. The City shall notify the Contractor of its intent to renew or not renew the contract six months prior to the expiration of the term.

Section 8. Independent Contractor. Contractor acknowledges and agrees that it is an independent contractor, that neither it nor any of its employees are employees of the City, and that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same and shall be responsible for their acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants.

Section 9. Insurance. The Contractor shall maintain insurance not less than the following:

Commercial General Liability, covering
- premises/operations
- products/completed operations
- broad form property damage
- explosion, collapse, and underground hazards if the hazards exist in the performance of this contract
- contractual liability
- independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than $1,000,000 per occurrence; aggregate limit not less than $2,000,000 per year

Automobile Liability Insurance, covering
- owned, hired, or borrowed vehicles
- employee vehicles, if used in performance of this contract
- combined single limit not less than $1,000,000 per occurrence; aggregate limit not less than $2,000,000 per year

Workers' Compensation Insurance, covering
- statutory benefits;

- covering employees; covering owners partners, officers, and relatives (who work on this contract)
- employers' liability, $1,000,000.

Insurance shall be provided by:
- companies authorized to do business in the State of North Carolina
- companies with Best rating of A or better.

Insurance shall be evidenced by a certificate:
- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:
  City of Durham, North Carolina
  Attention: Finance Director
  101 City Hall Plaza
  Durham, NC 27701
- both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

Section 10. Performance of Work by City.
If the Contractor fails to perform the Services in accordance with the provisions of this contract and its exhibits, the City may, at its discretion, perform or cause to be performed some or all of the Services, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention in writing. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Services pursuant to this section.

Section 11. Exhibits The following exhibits are made a part of this contract:

a) Exhibit A – Cart Buy-Out Agreement, totaling one page
b) Exhibit B – Scope of Services for Maintenance, Repair, Replacement, and Distribution of Roll-Out Carts, totaling two pages
c) Exhibit C – Compensation, totaling one page

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Section 12. Termination for Convenience ("TFC"). (a) *Procedure.* Without limiting any party's right to terminate for breach, the City may without cause, and in its discretion, terminate this contract by giving the Contractor 30 days prior written notice that refers to this section. , b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Services, including partly completed Services. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate, c) *Payment.* The City shall pay the Contractor an amount agreed to by the parties for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor a one hundred dollar TFC fee and for all Services performed except to the extent where previously paid. Services shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Services been completed except to the extent it would be inequitable to either party, and if

Services were to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for those Services. The Contractor shall not be entitled to any payment except as stated in this section because of TFC, whether on the basis of overhead, profit, damages, other economic loss, or otherwise. If this contract is terminated prior to the end of the initial 3 year term for reasons other than default by the Contractor, the discount offered in connection with the Cart Buy-Out Agreement in the amount of $818,957.00 as set forth in Exhibit A will be forfeited.

Section 13. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:
Director of Solid Waste Management
City of Durham
101 City Hall Plaza
Durham, NC 27701
The fax number is (919) 560-1132.

To the Contractor:
Otto Container Management, LLC
12700 General Drive
Charlotte, NC 28273
The fax number is (704) 588-5250

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery whichever first occurs.

Section 14. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by

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expiration of the term or otherwise) and termination of the Services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation.

The following Section 15 a – n apply to both the Roll-Out Cart Services Contract and the Cart Buy-Out Agreement.

Sec. 15. Miscellaneous. a) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

f) Compliance with Law. In performing all of the Services, the Contractor shall comply with all applicable law.

g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous

places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

i) SDBE. The Contractor shall comply with all applicable provisions of Chapter 26 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Contractor. Section 26-10(f) of that chapter provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Chapter 26 and not to the Contractor's alleged violations of other obligations.

j) Prompt Payment to Subcontractors. Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all subcontractors (which term includes sub-consultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham. If the City's Project Manager determines that it is appropriate to enforce this subsection (a), the City of Durham may withhold the sums estimated by the Project Manager to be sufficient to pay this interest from progress or final payments to the Contractor. (b) Nothing in this section shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%. (c) The City's Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

k) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

l) Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

m) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

n) Hindrances and Delays; Force Majeure. No claims shall be made by the City, and Contractor shall not be liable for, or deemed to be in default, for any delay or failure by Contractor to perform its obligations under this Agreement resulting, directly or indirectly, from acts of God, acts of public enemy, acts of terrorism, war, fires, explosions, earthquakes, tornados, hurricanes, floods, or other cause beyond the reasonable control of Contractor.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

OTTO CONTAINER MANAGEMENT, LLC

BY: _____
Name: Diana Thomas
Title: Chief Financial Officer

OTTO ENVIRONMENTAL SYSTEMS (NC), LLC

BY: _____
Name: Diana Thomas
Title: Chief Financial Officer
Date: 8/2/12

State of NC
County of Mecklenburg

ACKNOWLEDGEMENTS BY
OTTO CONTAINER MANAGEMENT, LLC
OTTO ENVIRONMENTAL SYSTEMS (NC), LLC

I, a notary public in and for the aforesaid county and state, certify that Diana Thomas personally appeared before me this day and stated the he or she is CFO of Otto Container Management. LLC, and Otto Environmental Systems (NC), LLC both a limited liability company, and that by authority duly given and as the act of the corporation, he or she signed the foregoing contract with the City of Durham and the corporate seal was affixed thereto. This, the 2 day of August, 2012.

My commission expires: June 28, 2016 Knisty Ballard
Notary Public

CITY OF DURHAM 18 69 NORTH CAROLINA

Attest: Diane Gray
City Clerk

CITY OF DURHAM

BY: _____

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

_____ 8/6/12
FINANCE OFFICER DATE

Otto Environmental Systems North America, Inc.
12700 General Drive
Charlotte, North Carolina 28273
Telephone +1(704)588-9191
+1(800)795-OTTO
Facsimile +1(704)588-5250

Exhibit A

May 22, 2012

David Boyd, CPA, CFE
Director
Finance Department, City of Durham
101 City Hall Plaza (Annex)
Durham, NC 27701
919-560-4455 ext. 18229
David.Boyd@DurhamNC.gov
www.DurhamNC.gov

Dear Mr. Boyd,
Thank you for your interest in Otto's residential trash carts. Below is product summary and price quotation for the buyout of your current operating lease.

92,312	95 Gallon Residential Trash Carts @ market price of $46.00/each	$4,246,352
	Assembly and Distribution @ $3.50/each	$ 323,092
	Freight @ $2.00/each	$ 184,624
TOTAL:		$4,754,068
Discount for renewal of service contract for 2 years		($818,957)
GRAND TOTAL:		**$3,935,111**

All pricing quoted is valid for 30 days from receipt of quote and is subject to any applicable sales taxes.

Thank you for the opportunity. Should you have any questions prior to placing the order, please contact me at your convenience.

Best Regards,

Diana Thomas, CPA

Chief Financial Officer
Otto Environmental Systems North America, Inc.
12700 General Drive, Charlotte, NC. 28273
Tel (704) 583-5223 Cell (704) 930-8443
Fax (704) 602-9204

Exhibit B

Scope of Work for Cart Maintenance, Repair,
and Delivery of Roll-Out Carts

The following Scope of Services shall be executed through the term of this Agreement. The objective of this program is to assure that all Carts are maintained in good working condition.

1. Otto shall:

   a. Maintain, repair and deliver existing Carts;
   b. Wash existing Carts;
   c. Execute pick-up and delivery of Carts for any customer changes;
   d. Receive, assemble and distribute new Carts to new City of Durham customers.

2. Otto will repair and maintain all Carts in the City's inventory regardless of the manufacturer, provided that components are procured by the City for brands other than Otto, and made available to Otto's maintenance crews. To the extent practical, Otto shall use parts scavenged from non-reparable Carts regardless of manufacturer to repair Carts. However, any Otto-brand carts that are currently under Warranty will have all parts provided by Otto at their expense.

3. No less than monthly, Otto and the City of Durham will review any Carts recommended for scrapping. Otto will provide a list to City of Durham of all Carts recommended for scrapping, including the serial number of each Cart. All Carts deemed unusable by the City of Durham will be recycled by OCM and the value of the resin will be paid to the City of Durham at the current market rate.

4. Otto will be available from 8:00 AM – 4:30 PM Monday through Friday, excluding non-operating holidays, and respond to customer requests for roll-out cart replacements, repair and/or delivery within two business days of notification. The City will make every effort to notify Otto as soon as possible when requests are made in order to allow Otto to efficiently allocate resources.

5. New customers initiating service will receive their carts within three (3) days from the date of the request.

6. All requests for service shall be submitted in writing. An electronic format (email) is acceptable as "in writing."

7. In no event shall the maintenance, repair and/or delivery of Carts by Otto interfere with the normal operations of City of Durham.

8. The City of Durham agrees to furnish at no cost, reasonable yard space, washing space, and office space to Otto during the Term of the Agreement solely for the purpose of providing the Services. Any administrative office supplies (paper, stapler, pens, etc.) will remain an expense borne by OCM.

9. Otto will keep all of its equipment, including but not limited to service trucks, etc., in good repair and operation. Occasionally, and with the permission of the City, OCM may

require using their lifting equipment to offload in-bound trucks, and this will be coordinated with the City in advance of the shipments.

10. Otto will display the Otto Container Management logo on all vehicles assigned to this contract to identify the company as a service provider in Durham.

11. At no time will Otto be deemed in default if its non-performance is directly attributable to City of Durham not supplying adequate Carts, parts, yard space or office space.

12. Otto will deliver and retrieve Carts for special events (evenings and/or weekends) with a 72-hour notice from the Solid Waste Management Director or designee.

13. Welding services will be provided at the request of the City of Durham on an as-needed basis (checked quarterly by OCM) at no additional cost to the City.

Exhibit C

Compensation

The following sets forth the compensation associated with the Services under this Agreement.

1. Supplier shall be compensated for the Services at a flat rate of $17,500 per month for up to 1,200 actions.

2. Cart actions exceeding 1,200 per month will be invoiced at $10.95 per complete action.

3. Both parties agree that any cart actions outside the normal day-to-day activity shall be negotiated in good faith. Actions outside normal activity shall be described as any single "project" involving more than 100 carts.

4. Otto may charge a fuel surcharge. Fuel shall be baselined from the Department of Energy's Diesel Fuel pricing for the Lower Atlantic Region as of July 2, 2012 at $3.607 as published at the site below:

http://www.eia.gov/dnav/pet/pet_pri_gnd_a_epd2d_pte_dpgal_m.htm

Each monthly invoice may have a fuel surcharge if the prior month's average is 20% higher than the baseline. The surcharge shall be determined by multiplying the month's per gallon average price minus the baseline price multiplied by 230. This amount shall be multiplied by the number of trucks in service for the billable period.

By the fifth day of each month, Otto shall submit its invoice to The City of Durham for the flat rate (including any applicable fuel surcharge), as well as an invoice of any additional Cart actions above and beyond the Agreed Actions. If a discrepancy arises between the numbers of additional Cart actions billed each month by Otto, the parties shall confer within fifteen (15) days of detection of such discrepancy to ascertain the actual number of additional Cart actions serviced and the reason for any such discrepancy.

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