

SOLID WASTE HANDLING SERVICES AGREEMENT

BETWEEN THE

CITY OF REDONDO BEACH, CALIFORNIA

AND

ARAKELIAN ENTERPRISES, INC. DBA ATHENS SERVICES

DATED _____

SOLID WASTE HANDLING SERVICES AGREEMENT
 BETWEEN
 THE CITY OF REDONDO BEACH, CALIFORNIA
 AND
 ARAKELIAN ENTERPRISES, INC. DBA ATHENS SERVICES

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SOLID WASTE HANDLING SERVICES AGREEMENT

THIS SOLID WASTE HANDLING SERVICES AGREEMENT (the "Agreement") is made and entered into this first day of _____ 2010, by and between the City of Redondo Beach, a charter city and municipal corporation organized under the laws of the State of California (hereafter "City"), and Arakelian Enterprises, Inc. dba Athens Services , a corporation, organized and existing under the laws of the State of California and having authority to transact business within the State of California (hereafter "Contractor").

RECITALS:

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et. seq.) ("AB 939") established a solid waste management process which requires cities and other local jurisdictions to implement source reduction, reuse and recycling as integrated waste management practices; and

WHEREAS, AB 939 authorizes and requires local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

WHEREAS, Section 40059 of the California Public Resources Code provides that the City may determine aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees and nature, location and extent of providing solid waste handling services and whether the services are to be provided by means of partially exclusive of wholly exclusive franchise, contract, license, permit or otherwise, either with or without competitive bidding;

WHEREAS, the City is obligated to protect the public health and safety of the residents of the City of Redondo Beach and arrangements by waste haulers for the collection of solid waste should be made in a manner consistent with the protection of public health and safety; and

WHEREAS, the City and the Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of solid waste, including AB 939 and the Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. §§9601 et seq.; and

WHEREAS, there are no places within the limits of the City of Redondo Beach where landfills are located, or which are suitable for the siting of a landfill, and solid waste must, therefore, be exported from the City; and

WHEREAS, the Contractor has represented and warranted to the City that it has the experience, responsibility, and qualifications to conduct the services detailed herein, and to arrange with residents and other entities in the City of Redondo Beach for the collection, safe transport and disposal of recyclables and solid wastes which may inadvertently contain hazardous substances; and

WHEREAS, the City Council of the City of Redondo Beach determines and finds that the public interest, health, safety and well being would be served if the Contractor performs these services for single family residential, multi-family dwellings and commercial service recipients; and

WHEREAS, Section 5-2.112 of the Redondo Beach Municipal Code provides that any person furnishing the City or its inhabitants with solid waste services is required by ordinance to have a permit therefore; and

WHEREAS, in accordance with Section 4 of Article IV of the City Charter the City Council is empowered to enter into agreements with any person or corporation and to prescribe the terms and conditions of such agreements; and

WHEREAS, the City Council adopted a resolution on _____, 2010 authorizing the execution of this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I

DEFINITIONS

The following capitalized names and terms shall have the meanings set forth below:

1.1 Act

"Act" or "AB 939" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.

1.2 Affiliate

"Affiliate" means all businesses (including corporations, limited liability companies, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" Contractor and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

1.3 Agreement

"Agreement" means this Solid Waste Handling Services Agreement between the City and the Contractor, including the Appendices hereto.

1.4 Agreement Date

"Agreement Date" means the date of delivery of this Agreement as executed by the parties hereto.

1.5 Agreement Year

"Agreement Year" means the fiscal year beginning on July 1 and ending on the following June 30.

1.6 Appendix

"Appendix" means appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof.

1.7 Applicable Law

"Applicable Law" means the Act, Environmental Laws and all other laws, statutes, rules, regulations, Legal Requirements, guidelines, permits, actions, determinations or orders of any Governmental Body having jurisdiction, applicable from time to time to the services provided pursuant to this Agreement; the performance of the parties' respective obligations under this Agreement; the Operating Assets; the siting, design, acquisition, permitting, construction, equipping, financing, ownership, possession, shakedown, testing, operation or maintenance of any of the Operating Assets; or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages, and further including the City Charter and the City Code).

1.8 Approved Rate Schedule

"Approved Rate Schedule" means Appendix E attached, as it is updated by the City to reflect approved adjustments, and includes the entire list of permissible fees to be charged by Contractor.

1.9 Billings

"Billings" or "Billing" or "Bill" means the statements of charges provided to Customers for services rendered by Contractor.

1.10 Bin

“Bin” means a metal Container with hinged lids and wheels with a capacity of less than ten (10) cubic yards. Bin specifications are included in Section 9.3.4.

1.11 Bulky Waste

“Bulky Waste” means Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); yard debris not otherwise Collected under Section 5.6.1 and small pieces of wood limited to one cubic yard of contained material; electronic equipment (including stereos, televisions, computers and monitors, VCRs, microwaves, cell phones and other similar items commonly known as “brown goods” and “e-waste”); and clothing. Bulky Waste does not include car bodies, Construction and Demolition Waste or items requiring more than two persons to remove. Other items not specifically included or excluded above will be Collected provided that they are not more than eight feet in length, four feet in width, or more than 150 pounds. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Waste, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the parties.

1.12 Cart

“Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated truck with a capacity of no less than 32- and no greater than 101-gallons.

1.13 CEQA

“CEQA” means the California Environmental Quality Act, codified at Cal. Pub. Res. Code §2100 et seq. (West 1986 & Supp. 1991) as amended or superseded, and the regulations promulgated thereunder.

1.14 CERCLA

“CERCLA” means the Comprehensive Environmental Responsibility Compensation and Liability Act, 42 U.S.C.A. §9601 et seq. (West 1983 & Supp. 1989), as amended or superseded, and the regulations promulgated thereunder.

1.15 Change in Law

"Change in Law" means any of the following events or conditions which has a material and adverse effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management, operation or maintenance of the Operating Assets or other matters to which Applicable Law applies:

- (1) the enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Agreement Date of any Applicable Law; or
- (2) the order or judgment of any Governmental Body, on or after the Agreement Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the City or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

1.16 City

"City" means the City of Redondo Beach, a California charter city and municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the term of this Agreement.

1.17 City Code

"City Code" means the Redondo Beach Municipal Code, as the same may be amended, supplemented or modified from time to time.

1.18 City Solid Waste

"City Solid Waste" means any Solid Waste which was originally discarded by the first generator thereof, prior to any processing, within the geographical limits of the City.

1.19 City Source-Separated Recyclable Materials

"City Source-Separated Recyclable Materials" means Source-Separated Recyclable Materials discarded within the City.

1.20 Collect/Collection

"Collect" or "Collection" means to take physical possession, transport, and remove Solid Waste within and from City.

1.21 Commercial

"Commercial" refers to services performed at or for Commercial Premises.

1.22 Commercial Premises

"Commercial Premises" means any building or site in any zone of the City, other than Residential Premises, from which any business, service, non-profit, governmental, institutional, commercial or industrial activity is conducted, including without limitation motels, hotels, recreational vehicle parks, restaurants, professional offices, clubhouses, places of entertainment, manufacturing plants, and private schools.

1.23 Commercial Rates

"Commercial Rates" shall mean the rates and charges permitted to be charged by the Contractor for providing Solid Waste Handling Services to Commercial Service Recipients, as identified in Appendix E hereto.

1.24 Commercial Source-Separated Recyclable Materials

"Commercial Source-Separated Recyclable Materials" means Source-Separated Recyclable Materials discarded from Commercial Premises.

1.25 Commercial Waste

"Commercial Waste" means City Solid Waste generated, produced or discarded by or at Commercial Premises.

1.26 Construction and Demolition Waste

"Construction and Demolition Waste" means City Solid Waste generated, produced or discarded in connection with construction, demolition, landscaping, or general clean-up activities within the City, including without limitation concrete, plaster, drywall, wood scraps, metals, dirt, rock and rubble.

1.27 Containers

“Container” means any cart, bin or other container used by City, Contractor, Service Recipients or the public in connection with the collection services provided by the Contractor under this Agreement.

1.28 Contractor

“Contractor” means Arakelian Enterprises, Inc. dba Athens Services, a California corporation, and its successors and assigns permitted hereby.

1.29 Contractor Operating Assets

"Contractor Operating Assets" means all real and personal property of any kind, which is owned, leased, managed or operated by or under contract to the Contractor for providing the Solid Waste Handling Services, including without limitation containers, vehicles, transfer stations, maintenance and storage facilities, administrative facilities and other equipment, machinery, parts, supplies and tools.

1.30 Contractor's Proposal

"Contractor's Proposal" means the proposal submitted by Contractor to City on May 20, 2010 in response to a Request for Proposals dated March 17, 2010. While there are provisions contained in Contractor’s Proposal which are referenced herein, this Agreement supersedes Contractor’s Proposal and is the final written expression of the parties’ Agreement. Contractor represents and warrants that all representations set forth in such proposal are true and correct.

1.31 Contractor Compensation

"Contractor Compensation" means the revenue received by the Contractor from Customers and the City in return for providing services in accordance with this Agreement.

1.32 CPI/CPI Less Food and Energy

“CPI” and “CPI Less Food and Energy” mean the Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average.

1.33 Customer

“Customer” means a Person receiving Solid Waste Handling Services from Contractor pursuant to the terms of this Agreement.

1.34 Department of Resources, Recycling and Recovery

“Department of Resources, Recycling and Recovery” means the Department of Resources, Recycling and Recovery within the Natural Resources Agency of State of California, also referred to as CalRecycle, and as the department was formerly known, the California Integrated Waste Management Board.

1.35 Designated Disposal Site

“Designated Disposal Site” means the facility or facilities designated in this Agreement, or by the City if the City has made any such designation, for the processing and/or disposal of City Solid Waste.

1.36 Disposal

"Disposal" means the ultimate disposition of Solid Waste Collected by Contractor at a landfill or otherwise in full regulatory compliance.

1.37 Disposal Site(s)

"Disposal Site(s)" means the Solid Waste handling Facility or Facilities utilized for the ultimate Disposal of Solid Waste Collected by Contractor.

1.38 Diversion

"Diversion" means any combination of waste prevention (source reduction), Recycling, reuse and composting activities that reduces waste disposed at landfills, provided such activities are recognized by the Department of Resources, Recycling and Recovery and the State of California as Diversion in its determination of the City’s Diversion rate and compliance with AB 939. The Department of Resources, Recycling and Recovery may limit Diversion considered to be achieved through Transformation/waste-to-energy, use of Green Waste as alternative daily cover and other activities.

1.39 Dwelling Unit

“Dwelling Unit” means a unit of a Residential building intended to house one family, including an apartment unit, condominium unit, or detached or attached home.

1.40 Electronic Waste

“Electronic Waste” means computer equipment, televisions, stereo audio equipment, cell phone or any item with a circuit board.

1.41 Environmental Laws

"Environmental Laws" means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Hazardous Substance Account Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

1.42 Excluded Waste

"Excluded Waste" means (1) Hazardous Waste, (2) Infectious Waste, and (3) Self-Hauled Waste.

1.43 Facility

"Facility" means any plant or site, owned or leased and maintained, operated or used by Contractor for purposes of performing under this Agreement.

1.44 Franchise Fee

"Franchise Fee" means a fee that helps fund the administration of Franchise Agreements, implementation of solid waste programs required by law, mitigation of infrastructure use and impacts, the protection of public health and safety, and any other costs incurred by the City in accordance with law.

1.45 Fees and Costs

"Fees and Costs" means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses of any Legal Proceeding.

1.46 Generator

“Generator” means any person that generates, produces or discards City Solid Waste.

1.47 Governmental Body

“Governmental Body” means the United States, the State of California, the County of Los Angeles, the City of Redondo Beach, and any other regional or local governmental authority, including any board, agency, authority, commission, administration, court or other body thereof, or any officer thereof acting within the scope of his or her authority.

1.48 Green Waste

“Green Waste” means grass, lawn clippings, shrubs, plants, weeds, small branches and other forms of organic materials generated from landscapes or gardens, separated from other Solid Waste.

1.49 Green Waste Overage

"Green Waste Overage" means green waste materials which exceed the amount which can fit in the green waste wheeled container. Green Waste overages shall be placed by the Service Recipient next to the wheeled container. Green Waste overages shall be bundled or tied with rope. Green Waste overages shall not be larger than 4 feet in length and 18 inches in diameter and 60 lbs. in weight.

1.50 Gross Receipts

“Gross Receipts” means any and all revenue received from Billings by City or Contractor, and compensation in any form, of Contractor or subsidiaries, parent companies or other Affiliates of Contractor, for the Collection and transportation of Solid Waste pursuant to this Agreement, in accordance with Generally Accepted Accounting Principles, including, but not limited to, Customer fees for Collection of Solid Waste, without subtracting Disposal fees, City fees or other fees or any other cost of doing business. Revenue received from the sale of Recyclable Materials to third parties is excluded from this definition of Gross Receipts.

1.51 Hazard Class

"Hazard Class" means the category of hazard assigned to a hazardous material under the definitional criteria of part 178 of 49.C.F.R. Ch. 1 and the provisions of the 172.101 Table in such subchapter.

1.52 Hazardous Waste

"Hazardous Waste" means (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281; (2) the Toxic Substance Control Act (15 U.S.C. Section 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766; (3) the California Health and Safety Code, §25117 (West 1984 & Supp. 1991); (4) the California Public Resources Code, §40141; and (5) future additional or substitute federal, state or local laws pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; and (b), radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40.

1.53 Household Hazardous Waste

"Household Hazardous Waste" means any Hazardous Waste generated incidental to owning or maintaining a place of residence. Household Hazardous Waste shall not include any waste generated in the course of operating a business concern at a residence.

1.54 Insurance Requirement

"Insurance Requirement" means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or anybody having similar functions or by any insurance company which has issued a policy with respect to the Operating Assets or the Solid Waste Handling Services.

1.55 Legal Entitlement

"Legal Entitlement" means all permits, licenses, approvals, authorizations, consents, and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Operating Assets or the performance of any obligation under this Agreement or the matters covered hereby.

1.56 Legal Proceeding

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

1.57 Legal Requirement

"Legal Requirement" means all applicable local, state and federal laws, ordinances, rules, regulations, codes and orders, as may be amended from time to time, including without limitation, the California Hazardous Waste Control Law ("HWCL" (Cal. Health & Safety Code 25100 et seq.), the provisions of the HWCL related to small quantity generators (Cal. Health & Safety Code 25218 et seq.), California regulations implementing the HWCL (22 C.C.R. 66001 et. Seq.), the California Occupational Safety and Health Act (Cal. Labor Code 6300 et. seq.), the Federal Occupational Safety and Health Act (29 U.S.C. 651 et. Seq.), Federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et. seq.), and the Department of Transportation Regulations relating to hazardous materials (Subtitle B, Chapter 1, Subchapter C of Volume 49 of the Code of Federal Regulations).

1.58 Liquid Waste

“Liquid Waste” means watered or dewatered sewage or sludges.

1.59 Loss-and-Expense

“Loss-and-Expense" means any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, claim, demand, charge, tax, or expense, including all Fees-And-Costs.

1.60 Materials Recovery Facility (“MRF”)

"Materials Recovery Facility" means a permitted Solid Waste Facility where Solid Wastes or Recyclable Materials are sorted or separated for the purposes of Recycling, processing or composting.

1.61 Medical Waste

“Medical Waste” means waste capable of producing an infection or pertaining to or characterized by the presence of pathogens, including without limitation certain wastes generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals and medical testing labs and any waste which includes animal wastes or parts from slaughterhouses or rendering plants.

1.62 Multi-Family Building/Units/Dwelling Units

"Multi-Family Building, Multi-Family Units or Multi-Family Dwelling Units" means any building in the City, other than a Single-Family Home, used for residential purposes irrespective of whether residence therein is temporary or permanent and includes properties with four or more units on the property, which receive bin services, except as otherwise designated by the Public Works Director. The Term "Multi-Family Units" does not include hotels, motels, nursing homes or convalescent centers, barracks, dormitories or other similar places.

1.63 Non-City Solid Waste

"Non-City Solid Waste" means any Solid Waste which was originally discarded by the first generator thereof, prior to any processing, outside the geographical limits of the City.

1.63A Organics

"Organics" means:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper (including waxed cardboard, napkins, paper towels, paper plates, paper milk cartons);
- Tea bags;
- Coffee grounds and filters
- Wooden crates;
- Sawdust;
- Plants (including floral trimmings, tree trimmings, leaves, grass, brush, weeds and all items accepted in the Green Waste Cart per Sections 1.48 and 5.6.1); and,
- Other compostable materials.

1.64 Overdue Rate

"Overdue Rate" means the WSJ (Wall Street Journal) Prime Rate.

1.65 Owner

"Owner" means the person holding the legal title or having a right to possession to the real property constituting the Premises to which City Solid Waste collection service is provided or required to be provided hereunder.

1.66 Premises

"Premises" means any Residential Premises and Commercial Premises where City Solid Waste is generated, produced or discarded.

1.67 Public Works Director

"Public Works Director" means the Director of Public Works or her designated representative.

1.68 Qualified Household Hazardous Waste

"Qualified Household Hazardous Waste" means waste materials determined by the California Integrated Waste Management Board, the Department of Health Services, the State Water Resources Control Board, or the Air Resources Board to be:

- (1) Of a nature that they must be listed as hazardous in State statutes and regulations;
- (2) Toxic/ignitable/corrosive/reactive; and
- (3) Carcinogenic/mutagenic/teratogenic;

which are discarded from households as opposed to businesses. Qualified Household Hazardous Waste shall not include Hazardous Waste.

1.69 Recyclable Materials

"Recyclable Materials" means a material which is a part of the solid waste stream which is to be collected pursuant to the Agreement and which can be reused or processed into a form suitable for reuse through reprocessing or manufacture, consistent with the requirements of the Act, and includes Source-Separated Recyclable Materials. Recyclable Materials include: aluminum cans, glass jars and bottles, steel (tin) food cans, bi-metal beverage cans, empty steel aerosol containers and empty paint cans, plastic soda pop bottles and other Type #1 containers (PET polyethylene terephthalate); plastic milk and water jugs and other Type #2 containers (HDPE - high density polyethylene); Type #3 plastic containers (v-polyvinyl chloride); Type #4 plastic containers (LDPE - low density polyethylene); Type #5 plastic containers (PP-polypropylene); Type #6 plastic containers (PS-polystyrene); Type #7 plastic containers (other and commingled); juice boxes and milk containers (Aseptic Packaging, Tetra Pack, and Waxed Cardboard); scrap metal, coat hangers, metal foil, newspaper, mixed paper (ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags, wrapping paper) and corrugated cardboard. Textiles: articles of clothing or decoration

made of fabrics including but not limited to: cotton, polyester, silk etc. Electronic Goods: Computer equipment, Televisions, Stereo equipment.

1.70 Recycle, Recycled, Recycling

“Recycle”, “Recycled” or “Recycling” means the process of collecting, sorting, cleansing, treating, reconstituting or otherwise processing materials that are or would otherwise become Solid Waste, and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace.

1.71 Recycling Overage

“Recycling Overage” means recyclables, which exceed the amount that can fit in the wheeled container. Recycling overages shall be placed by the Service Recipient in additional wheeled container or next to the wheeled container in a container or plastic bag.

1.72 Refuse

"Refuse" means putrescible and non-putrescible Solid Waste, excluding Recyclable Materials, Source Separated Green Waste and Construction and Demolition Waste.

1.73 Rent-A-Bin

“Rent-A-Bin” means a three-cubic-yard Bin provided for the one-time accumulation and collection of Solid Waste from Premises.

1.74 Residential

"Residential" refers to services performed at and for Residential Premises, which include both Single-Family and Multi-Family Dwellings.

1.75 Residential Bin

“Residential Bin Rate” means the rates and charges permitted to be charged by the Contractor for providing Solid Waste Handling Services to Residential Refuse Bin Customers as identified in Section 5.3.1.

1.76 Residential Premises

“Residential Premises” means Single-Family Homes and Multi-Family Buildings.

1.77 Residential Cart Contractor Payment

"Residential Cart Contractor Payment" has the meaning specified in Section 12.1.1.

1.78 Residential Source-Separated Recyclable Materials

"Residential Source-Separated Recyclable Materials" means Source-Separated Recyclable Materials discarded from Residential Premises.

1.79 Residential Waste

"Residential Waste" means City Solid Waste generated, produced or discarded by or at Residential Premises.

1.80 Roll-off Box

"Roll-off Box" means Solid Waste Collection Containers of 10 cubic yards or larger.

1.81 Scavenging

"Scavenging" means the unauthorized removal of Recyclable Materials. Scavenging is prohibited by California Public Resources Code Section 41950 and the Redondo Beach Municipal Code.

1.82 Scrap Materials

"Scrap Materials" means any materials which are separated by type by the Generator thereof from materials which otherwise are discarded or rejected as City Solid Waste and which are sold or donated by the Generator to a private recycler operating with a permit or license issued by the City or a non-profit charity registered with the State Attorney General, scrap dealer or salvager and recycled. Scrap Materials shall not include any materials which any person purports to be Scrap Materials but which (1) are commingled with City Solid Waste, or (2) are not commingled with City Solid Waste but which are collected by any person other than the Contractor as part of any transaction or arrangement involving City Solid Waste, irrespective of whether the Generator pays or receives consideration in connection with such transaction or arrangement.

1.83 Self-Hauled Waste

"Self-Hauled Waste" means City Solid Waste collected and hauled by Self-Haulers.

1.84 Self-Hauler

"Self-Hauler" means any person not engaged commercially in waste hauling who collects and hauls Residential Waste or Commercial Waste generated from residential, commercial or industrial activities conducted solely by such person in quantities of less than one (1) ton per week.

1.85 Section Deleted

1.86 Service Date

"Service Date" means the date on which the parties agree that any particular service described in this Agreement shall commence.

1.87 Service Recipient

"Service Recipient" means Owners or Generators receiving Solid Waste Handling Services.

1.88 Single-Family Home

"Single-Family Home" means any building in the City used for or designated as a single-family residential dwelling, including each part of a condominium project, duplex or a townhouse project which has one, two or three units on the property and which have curbside or alley collection of Solid Waste. "Single-Family Home" also includes some four-unit properties, as designated by the Public Works Director.

1.89 Single Family Residence

"Single-Family Residence" or "Single-Family Dwelling" - or -"Single Family Unit" - generally means a detached building, or each unit of a multi-family dwelling, which utilizes one or more single family Residential Solid Waste Containers, (i.e.. containers or cans) and not bins.

1.90 Solid Waste

"Solid Waste" means all garbage, refuse, rubbish and other materials and substances discarded or rejected as being spent, useless, worthless or in excess to the generator thereof at the time of such discard or rejection and which are normally disposed of by or collected from residential (single family and multi-family), commercial, industrial, governmental and institutional establishments (including non-Source-Separated Qualified Household Hazardous Waste), which are acceptable at Class III landfills under Applicable Law, and which are originally discarded by the first Generator thereof and have not been previously processed. Solid Waste includes Green Waste, and Source-Separated Recyclable Materials.

1.91 Solid Waste Fund

"Solid Waste Fund" means the Solid Waste Fund established and maintained by the City as an enterprise fund pursuant to the City Code separate from its other funds and accounts for receipts and disbursements in connection with City solid waste services.

1.92 Solid Waste Handling Services

"Solid Waste Handling Services" means all of the duties and obligations of the Contractor hereunder. "Solid Waste Overage" means solid waste in excess of the amount of solid waste of which will fit into the wheeled container provided to the premises for collection. Solid Waste Overages must be placed in one (1) additional 32 or 64 gallon wheeled container provided by the contractor or standard residential solid waste containers which include portable containers made of metal, hard rubber or plastic and may not weigh more than sixty (60) pounds. Overages may be placed in heavy plastic bags or compactor bags manufactured for solid waste collection which are securely tied, not perforated or split, and weigh no more than sixty (60) pounds.

1.93 Source-Separated Recyclable Materials

"Source-Separated Recyclable Materials" means materials which (1) are separated from City Solid Waste by the first Generator thereof, (2) are discarded separately from such Solid Waste for recycling purposes, and (3) do not constitute Scrap Materials.

1.94 State

"State" means the State of California.

1.95 Term

"Term" has the meaning specified in Article XIV hereof.

1.96 Textiles

"Textiles" means articles of clothing or decoration made of fabrics including but not limited to cotton, polyester, silk etc.

1.97 Ton

"Ton" means a "short ton" of 2,000 pounds.

1.98 Transfer Station

“Transfer Station” means a Facility that received Solid Waste from Collection vehicles and transfers the material to larger vehicles for transport to landfills and other destinations. Transfer Stations may or may not also include MRFs, transferring residual Refuse (Refuse left after the sorting of Recyclable Materials) to landfills and Recyclable Materials, including Green Waste and/or Construction and Demolition Waste, to processors, brokers or end-users.

1.99 Transformation

“Transformation” means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting.

1.100 TSDF

“TSDF” means a Treatment, Storage or Disposal Site that is permitted by the appropriate agencies to take and manage Hazardous Waste.

1.101 Uncontrollable Circumstances

“Uncontrollable Circumstance” means only the following acts, events or conditions, whether affecting the Operating Assets, the City, or the Contractor, to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable control and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party:

- (1) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Facility), hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, or civil disturbance;
- (2) a Change in Law;
- (3) the failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the Operating Assets are located to provide and maintain utilities, services, water and sewer lines and power transmission lines to the

Operating Assets, which are required for the performance of the Solid Waste Handling Services and which directly results in a delay or curtailment of the performance of the Solid Waste Handling Services; and

- (4) pre-emption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Operating Assets.

Labor unrest, including work stoppage or slowdown or sick-out conducted by Contractor employees or directed at Contractor is not considered an Uncontrollable Circumstance, but may be excused under Section 15.4.2.

It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances:

- (a) general economic conditions, interest or inflation rates, or currency fluctuation or changes in the cost of fuel, commodities, supplies or equipment;
- (b) changes in the financial condition of the City, the Contractor or any of its Affiliates or any subcontractor affecting their ability to perform their obligations;
- (c) the consequences of errors, neglect or omissions by the Contractor, any of its Affiliates or any subcontractor of any tier in the performance of the Solid Waste Handling Services;
- (d) the failure of the Contractor to secure patents or licenses in connection with the technology necessary to perform its obligations hereunder;
- (e) union work rules, requirements or demands which have the effect of increasing the number of employees employed in connection with the Operating Assets or otherwise increase the cost to the Contractor of operating and maintaining the Operating Assets or providing the Solid Waste Handling Services;
- (f) strikes, work stoppages or other labor disputes or disturbances occurring with respect to any activity performed or to be performed by any of the Contractor's subcontractors or suppliers in connection with the Operating Assets or the Solid Waste Handling Services;
- (g) any failure of any subcontractor or supplier to furnish labor, materials, service or equipment for any reason;
- (h) equipment failure; or

(i) any impact of prevailing wage law, customs or practices on the Contractor's construction or operating costs; or

(k) changes in market rates for, or the unavailability of markets for the sale of Commercial or Residential Source-Separated Recyclable Materials.

1.102 White Goods

“White Goods” means enameled household appliances, such as refrigerators, stoves; washer/dryers, water heaters, dishwashers, trash compactors and similar items.

ARTICLE II

INTERPRETATIONS

2.1 Interpretation

This Agreement, including the Appendices attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

In this Agreement, unless the context otherwise requires:

2.1.1 References Hereto

The terms “hereby”, “hereof”, “herein”, “hereunder”, and any similar terms refer to this Agreement, and the “hereafter” means after, and the term “heretofore” means before, the date of execution of this Agreement.

2.1.2 Gender and Plurality

Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

2.1.3 Persons

Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations, non-profit corporations and other legal entities, including Governmental Bodies, as well as individuals.

2.1.4 Headings

The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

2.1.5 Entire Agreement

This Agreement contains the entire agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals (including Contractor’s Proposal), and agreements between the parties, whether written or

oral. The parties acknowledges this document has been executed with the consent and upon the advice of counsel. Each of the parties acknowledges that no party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other party to execute this instrument. 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.

2.1.6 Reference to Days

All references to days herein are to calendar days, including Saturdays, Sundays, and holidays, except as otherwise specifically provided.

2.1.7 Counterparts

This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

2.1.8 Governing Law

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

2.1.9 Jurisdiction.

Except for those matters where Federal Courts have exclusive jurisdiction, any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

2.1.10 Severability

If any clause, provision, subsection, Section or Article of this Agreement shall be determined to be invalid by any court of competent jurisdiction, then the parties hereto shall: (1) promptly meet and negotiate a substitute for such clause, provision, section or Article which shall, to the greatest extent legally permissible, effect the intent of the parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; (3) negotiate such changes in substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement

shall be construed and enforced as if such invalid portion did not exist. Notwithstanding the foregoing, however, the provisions of this Agreement reserving to the City the right and power to designate the Designated Disposal Site for City Solid Waste as provided in Section 8.10 hereof and otherwise herein, shall not be deemed to be severable from the other provisions hereof. In the event such provisions are held in any Legal Proceeding which is binding upon the City to be null, void, in excess of the City 's powers or otherwise invalid or unenforceable, and the Contractor as a result thereof, utilizes a disposal site other than the Designated Disposal Site, this entire Agreement shall immediately terminate without any liability of the City to the Contractor.

2.2 References to Laws and Other Agreements

All references in this Agreement to Applicable Laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

2.3 Agreement

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

2.4 Appendices

Each of the Appendices identified as Appendix "A" through "K" is attached hereto and incorporated herein and made a part hereof by this reference. Appendix L is attached for information and reference purposes only.

2.5 Attorneys' Fees

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover its reasonable attorney's fees and costs. Attorneys' fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CONTRACTOR

3.1 Representation and Warranties of the Contractor

The Contractor, by acceptance of this Agreement, represents and warrants the following to City for the purpose of inducing City to enter into this Agreement and to consummate the transaction contemplated hereby, all of which shall be true as of the Agreement date:

- (A) Existence and Powers. The Contractor is duly organized and validly existing as a corporation, organized and existing under the laws of the State of California and having authority to transact business within the State of California, with full legal right, power and authority to enter into and perform its obligations under this Agreement.
- (B) Due Authorization and Binding Obligation. The Contractor has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Contractor and constitutes the legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally. The Board of Directors or partners of Contractor (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of Contractor have authority to do so. Contractor shall authorize one employee for the City as a single point of contact for issues arising under this Agreement, and Contractor acknowledges and agrees that City may expect and assume that this employee's actions are taken on behalf of and with the full approval of the Contractor.
- (C) No Conflict. Neither the execution nor the delivery by the Contractor of this Agreement nor the performance by the Contractor of these obligations hereunder (1) conflicts with, violates or results in a breach of any law or governmental regulations applicable to the Contractor; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of the Contractor) or instrument to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default under: any such judgment, decree, agreement or instrument, or (3)

will result in the creation or imposition, of any encumbrance of any nature whatsoever upon any of the properties or assets of the Contractor.

- (D) There is no action, suit or other proceeding as of the Agreement Date, at law or in equity, before or by any court or governmental authority, pending or, to the Contractor's best knowledge, threatened against the Contractor which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the Contractor of its obligations hereunder or by the Contractor under any such other agreement or instrument.
- (E) No Legal Prohibition. The Contractor has no knowledge of any Applicable Law in effect on the Agreement Date which would prohibit the performance by the Contractor of this Agreement and the transactions contemplated hereby.
- (F) Information Supplied by the Contractor. The information supplied by the Contractor in all submittals made in connection with negotiation and execution of this Agreement, including all materials in Appedices of this Agreement, and all representations and warranties made by Contractor throughout this Agreement are true, accurate, correct and complete in all material respects on and as of the Agreement Date. Note that inaccuracies in Contractor's Proposal, such as material omissions of past and pending litigation as requested under the Request for Proposals through which this Agreement was procured, is grounds for termination of this Agreement.
- (G) Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding this Agreement and the work to be performed by it, and is satisfied that those conditions and circumstances will not impair its ability to perform the work and provide the Collection services required by this Agreement.
- (H) Contractor's representative, designated in Section 10.1, shall have authority in all daily operational matters related to this Agreement. City may rely upon action taken by such designated representative as action of Contractor unless the actions taken are not within the scope of this Agreement.

3.2 Covenants of Contractor

Contractor hereby:

(1) Waives any right it may possess to contest the legal right, power or authority of the City to enter into and perform this Agreement, including particularly the provisions thereof providing for the right of the City to require the delivery of City Solid Waste to the Designated Disposal Site (if the City elects to make such designation), and agrees to cooperate with and assist the City in supporting the legal validity of and authorization for such provisions in the event of any legal challenge thereto brought or made in any manner by a third party; and

(2) Agrees to observe and comply with the operating rules and regulations established by the City with respect to the Designated Disposal Site (if the City elects to make such designation), including without limitation those governing delivery procedures, receiving hours, vehicle and waste inspection, Hazardous Waste screening, litter control and safety measures

ARTICLE IV

ACCEPTANCE OF LICENSE AND PRIVILEGE

4.1. Grant and Acceptance of Agreement

4.1.1 Service

Pursuant to Section 40059 of the Act, the City hereby grants an exclusive contract and privilege, on the terms and conditions set forth herein to the Contractor for the service in the City of collecting, transporting, handling and disposing of City Solid Waste. By its executed acceptance hereof the Contractor accepts the license and privilege so granted by the City on and subject to the terms and conditions contained herein and in the City Code, including but not limited to Articles 1 and 4 of Chapter 2, Title 5, and agrees to perform all of the duties and obligations of a Contractor thereunder.

4.1.2 License Area

The area with respect to which this Agreement is granted pursuant to Section 4.1.1 shall be the geographical limits area of the City, as specified in, and limited by, Appendix A hereto.

4.2 Permits and Licenses

Contractor shall acquire and maintain all necessary permits and licenses for the Collecting, transporting, processing, and storing of Solid Waste and Recyclables, disposing of Solid Waste, and the Recycling of Recyclables as required under this Agreement. Failure to maintain all required permits shall be deemed a material breach of contract for which City may terminate this Agreement as provided in Section 13.5. Contractor must follow requirements of the Redondo Beach Municipal Code, including, but not limited to, obtaining a City of Redondo Beach business license.

4.3 Limitations to Scope

Notwithstanding any provision to the contrary contained herein, the exclusive franchise, right and privilege to provide Solid Waste Handling Services at Premises within City granted to Contractor by Section 4.1 of this Agreement specifically excludes the following services, which services may be provided by Persons other than Contractor and which may be the subject of other permits, licenses, franchises or agreements issued or entered by City:

- a) The sale or donation of source-separated Recyclable Material by the Waste Generator to any Person or entity other than Contractor; provided, however, to the extent permitted by law, if the Generator is required to pay monetary or non-monetary consideration for the Collection, transportation, transfer, or processing of Recyclable Material, the fact that the Generator receives a reduction or discount in price (or in other terms of the consideration the Generator is required to pay) shall not be considered a sale or donation;
- b) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Waste Generator, and which is transported personally by such Generator (or by his or her full-time employees) to a processing or Disposal Site in a manner consistent with all applicable laws and regulations;
- c) Green Waste removed from a 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;
- d) The Collection, transfer, transport, Recycling, processing, and disposal of animal remains from slaughterhouse or butcher shops for use as tallow;
- e) The Collection, transfer, transport, Recycling, processing, and disposal of by-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- f) The Collection, transfer, transport, Recycling, processing, and disposal of liquid wastes;
- g) The Collection, transfer, transport, Recycling, processing, and disposal of scrap materials;
- h) The Collection, transfer, transport, Recycling, processing, and disposal of Hazardous Substances, Hazardous Waste, Household Hazardous Waste, including medical and radioactive waste regardless of its source;
- i) Construction and Demolition Waste;
- j) Material Collected in a Roll-Off Box or Compactor Roll-Off Box (except as provided to City under Section 5.15);
- k) The Collection, transfer, transport, Recycling, processing, and Disposal of Solid Waste generated from City-owned and/or operated premises, public works projects, and/or City Events by City through City officers or employees in the normal course of their City employment; and,

- l) Solid Waste Handling Services for governmental agencies other than City, which may have facilities in City, but over which City has no jurisdiction in connection with the regulation of Solid Waste (including, but not limited to, Redondo Beach Union High School, middle schools and elementary schools, which are entitled, but not required, to receive service under Section 5.14); and,
- m) Services provided to Northrup Grumman and its Redondo Beach Facilities (located at One Space Park); and,
- n) Services provided to The South Bay Galleria (1815 Hawthorne Boulevard).

Inclusion of a service in these exemptions shall not waive Contractor's duty to perform such service if otherwise required under this Agreement. The exclusive franchise, right and privilege to provide Solid Waste Handling Services within City granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable state and federal laws, now in effect and adopted during the term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. In the event that future interpretations of current law, future enactments or developing legal trends limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Contractor as a result thereof.

4.4 Hauling by Third Parties.

This Agreement shall not prohibit haulers of City Solid Waste and Non-City Solid Waste other than the Contractor from hauling such waste over City streets in accordance with Applicable Law.

4.5 Defense of Franchise

Contractor agrees to and shall timely take all actions that are reasonably necessary to defend the validity and enforceability of this Agreement and shall pay all costs related to such defense. Contractor shall defend, indemnify, protect and hold harmless, the City, its officers, agents and employees from any and all claims, actions or proceedings to attack, set aside, void, annul or seek monetary damages resulting from an approval by the City of this Agreement; provided, however, Contractor shall not be responsible for indemnifying the City for any monetary damages which are awarded unless directly or indirectly resulting from Contractor's negligence or misconduct. The City shall promptly notify Contractor of any such claim, action, or proceeding. The City and Contractor shall meet in good faith in an effort to

come to a mutual agreement for a joint defense; provided that the City shall be entitled to select legal counsel of its choice to conduct the defense if an agreement cannot be reached. Contractor's obligations to pay all costs, defend, indemnify, protect and hold harmless under this section shall not be altered in the event City retains separate counsel.

4.6 Enforcement of Exclusivity

Contractor shall be responsible for enforcing the exclusivity of this Agreement. City shall have the right to enforce the exclusivity provisions hereof if, in its absolute and sole discretion, it chooses to do so, but shall have no obligation to do so for the benefit of Contractor or otherwise. City additionally shall have the right, but not the obligation, to request that Contractor enforce the exclusivity provisions hereof. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City. If Contractor requests that City take administrative, law enforcement, or other legal action to protect Contractor's exclusive rights, or otherwise enforce the exclusivity of this Agreement (including the adoption of any resolution or ordinance intended to facilitate the enforcement of the exclusive rights granted herein), Contractor shall reimburse City for all administrative, law enforcement, or other legal costs and fees related to any such action taken by the City, if any.

4.7 Ownership of Solid Waste

City and Contractor understand and agree that it is Contractor, and not City, who will arrange to Collect Solid Waste, that City has not, and, by this Agreement does not, instruct Contractor on its Collection methods, nor supervise the Collection process; nor do the Parties intend to place title to Solid Waste Collected by Contractor in City. Rather, the Parties intend that whatever, if any, title in and to the Solid Waste that is Collected by Contractor which otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Contractor; and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. Subject to the provisions of this Agreement, and unless City exercises its rights to direct the location for Disposal and processing of Solid Waste, Contractor shall have the right to retain, Recycle, process, dispose of, and otherwise use Solid Waste Collected pursuant to the terms hereof in any lawful fashion or for any lawful purpose; and, further, shall have the right to retain any benefit resulting from its right to retain, Recycle, process, dispose of, or reuse the Solid Waste which it Collects. City's right to redirect Solid Waste is not intended to impact Contractor's right to Recyclables revenue, subject to Section 12.4.1.3. Ownership of Solid Waste shall transfer to Contractor when Customer places it at point of Collection.

4.8 Assignment and Transfer of Agreement

Except as may be provided for in Section 13.2 (City's Right to Perform Services), Contractor shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement (collectively referred to as an "assignment") to any other Person without the prior written consent of City. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section the term "assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to (i) a sale, exchange or other transfer of fifty percent (50%) or more of Contractor's assets dedicated to service under this Agreement ; (ii) a sale, exchange or other transfer, on a cumulative basis, of fifty percent (50%) or more of the outstanding common stock or other ownership interest of Contractor; (iii) a sale, exchange or other transfer of outstanding common stock or other ownership interest of Contractor provided said sale, exchange or transfer may result in a change of control of Contractor; (v) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (v) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor of any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (iv) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

Contractor acknowledges that this Agreement involved rendering a vital service to City's residents and businesses, and that City has selected Contractor to perform the services specified herein based on (1) Contractor's experience, skill and reputation for conducting its Solid Waste Handling Services in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its sole and absolute discretion. Any request for an assignment must be approved by the City Council, and no request by Contractor for consent to an assignment

need be considered by City unless and until Contractor has met (or with respect to matters that would only occur upon completion of the assignment if approved, made reasonable assurances that it will meet) the following requirements:

- a) Contractor shall pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. An advance payment towards expenses may be requested by City prior to City consideration of any assignment request and Contractor shall be responsible to pay all costs incurred by City in considering a request for assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the assignment. Contractor shall reimburse City for all such costs within thirty (30) days of being providing with documentation that City has incurred, or has been billed for and will incur, such costs.
- b) Contractor shall pay the City a transfer fee equal to one percent (1%) of the Gross Receipts it, or its assignee, will receive during the remaining term of the Agreement, as estimated by City. This transfer fee shall be waived if the transfer is to an Affiliate with the same parent company guarantor, provided the parent company guarantor shall execute a corporate guarantee for the new contractor, and basic operations and facilities will remain unchanged.
- c) Contractor shall furnish City with audited financial statements for itself, and the proposed assignee's operations for the immediately preceding three (3) operating years.
- d) A proforma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such proforma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Contractor's operations.
- e) Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local Environmental Laws and that the assignee has provided City with a complete list of any such citations and censures;

(iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state and local laws regulating the Collection and Disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall City be obliged to consider any proposed assignment by City if Contractor is in default at any time during the period of consideration. Should City consent to any assignment request, such assignment shall not take effect until all conditions relating to City's approval have been met.

4.9 Maintenance of Corporate Existence

The Contractor covenants that during the Term of this Agreement it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not take any other action which would materially impair the ability of the Contractor to perform the Agreement Service.

ARTICLE V

SERVICES

5.1 General

This Section describes the Service standards to be compiled with by the Contractor in performing its obligations under the Agreement. The work to be done by Contractor pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that all Customers are provided reliable, courteous and high-quality Solid Waste Handling Services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this section, whether such other aspects are enumerated elsewhere in the Agreement or not.

5.2 Frequency of Collection Generally

Commencing on the Service Date, the Contractor (i) shall collect City Solid Waste, Source-Separated Recyclable Materials and Green Waste from each Residential Premises receiving Cart Refuse service at least once per week, and (ii) shall collect City Solid Waste and Source-Separated Recyclable Materials from each Residential Premises receiving Bin Service and each Commercial Premises at least once every week, all as further provided in this Article.

5.3 Classifications of Collection Services

5.3.1 Current Classifications

Customers utilizing Carts for Refuse, Recyclables and Green Waste Collection shall be classified as "Residential Cart Customers." Generally such Customers live in Residential buildings with one to three dwelling units, but may include Customers with up to eight dwelling units in a Multi-Family Building or as otherwise approved by City.

Residential Multi-Family Buildings receiving Refuse Collection service using Bins shall be classified as Residential Bin Customers.

Other Customers are considered Commercial Customers and may use Bins or Carts for Refuse Collection. The Public Works Director shall make the final determination as to whether a Commercial Customer receives service using a Bin or a Cart.

5.3.2 Changes in Classification.

The Contractor may make any change in the classification of service requested by any Service Recipient upon written notice to, but not without the approval of, the Public Works Director.

5.4 Refuse Collection

5.4.1 Residential Cart Refuse Collection

Contractor shall provide unlimited Refuse Collection service not less than once per week to all Customers at Residential Dwelling Units not serviced by Bin Service, with one or more Carts for the Collection of Refuse (“Refuse Cart(s)”). Contractor shall use semi-automated or automated mechanized collection system. Solid Waste vehicles shall be equipped with mechanized lifting capability for Carts.

Contractor shall also Collect Refuse placed beside Cart(s) in Customer’s bags or boxes at no additional charge. Customers that regularly require more than one Refuse Cart may request additional Refuse Carts as necessary to service the waste stream generated at no additional charge.

If there is a dispute between a Customer and Contractor as to whether Cart or Bin Service shall be provided, City will make the final determination.

5.4.2 Refuse Cart Distribution and Replacement

Customers have been issued Refuse Carts under the prior service contract which Contractor may initially use for Refuse Collection. Contractor is responsible for maintaining and replacing City-provided Carts. Within 12 months of the start of service under this Agreement, Contractor shall replace all Refuse Carts with new Carts that meet the requirements of Section 9.3.2. All Carts, upon distribution in the City become property of the City.

Customers may request 32, 64 or 96-gallon Refuse Carts. Customers may request an exchange of Cart sizes once every six months at no additional charge. Additional exchanges may be charged for in accordance with Appendix E. An exchange will consist of all Cart exchanges

request at the same time, and may include exchanges for multiple Cart types (Refuse, Recycling, Green Waste).

5.4.3 Residential and Commercial Bin Refuse Collection

Contractor shall provide Bin Service to Residential Customers not receiving Cart service, and Commercial Customers that can accommodate a Bin. Contractor shall Collect and remove all Refuse that is placed in Bins from the property of Customers receiving Bin Service, at least once per week and more frequently if required to handle the waste generated at the Premises where the Bins are located. City shall make final determination as to the number and size of Containers, and frequency of Collection to be provided to Customers. Special consideration shall be given when determining the pickup areas to ensure that the flow of traffic is not impeded.

Contractor shall provide 1, 1.5, 2, 3, 4 and 6 cubic yard Bins upon request.

Contractor will service Bins equipped with compaction devices or “compactors” that attach to the Bins. The provision of the compaction device itself is outside this Agreement. Customers may separately negotiate with Contractor to obtain this device, or may obtain this device from another party.

5.4.4 Commercial Premises Cart Service

As an alternative to the requirements of Section 5.4.3, Contractor shall offer Collection in 64-gallon Refuse Carts to Customers at Commercial Premises that do not have space for, or do not generate enough waste to require the use of Bins for Collection. Customer shall be charged based on the number of Refuse Carts provided and the number of pickups per Cart per week (once or twice per week Collection permitted), in accordance with the Approved Rate Schedule. If Contractor and Customer have a disagreement as to whether a Refuse Cart is appropriate, or if City determines the Collection in a Refuse Cart causes health and safety or other concerns, City shall make the final determination as to whether Collection in a Refuse Cart may occur, and as to the frequency of Collection. City does not intend for Commercial Cart service to be provided where such Carts would be placed in a high traffic or pedestrian area. Services, such as Bulky Waste pickups and Recyclables Collection, provided to Commercial Cart Customers shall be the same as those provided to Commercial Bin Customers, and not as provided to Residential Cart Customers.

5.4.5 Overflowing Bins and Commercial Carts

Bin Customers and Commercial Cart Customers that regularly produce more Refuse than their current level of service can accommodate may have their service level increased in accordance with the following procedure:

First Incident in Three Month Period - If more material is placed for Collection than fits in a Bin or Commercial Cart, Contractor shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer (at both the service and billing addresses) the picture and a letter instructing that further instances may result in an increase in the level of service. Contractor may charge the Bin Overage Cleanup fee in the Approved Rate Schedule, which permits charging after one warning (provided photograph is obtained and delivered).

Second Incident in Three Month Period - Upon the second event of an overfilled Bin or Commercial Cart in a three-month period, Contractor shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer the picture and a letter instructing that a third incident in that same three month period may result in an increase in the level of service. If the Container overflowed sufficiently to require the driver to leave the Collection vehicle to clean around the Container, Contractor may charge the Bin Overage Cleanup fee in the Approved Rate Schedule.

Third Incident in Three Month Period - Upon the third event of an overfilled Bin or Commercial Cart in a three-month period, Contractor shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer the picture and a letter requesting that Customer increase its service level. If the Customer declines, Contractor may petition City to permit Contractor to increase the service level to accommodate the higher demand for service. If the Container overflowed sufficiently to require the driver to leave the Collection vehicle to clean around the Container, Contractor may charge the Bin Overage Cleanup fee in the Approved Rate Schedule.

5.4.6 Roll-off Box Service

The provision of service using Roll-Off Boxes is not included under this exclusive franchise, except as required for City facilities under Section 5.15.

5.4.7 Temporary Bin Service - "Rent-a-Bin"

Contractor shall provide exclusive (as limited by Section 4.3) temporary Bin Service using Rent-a-Bins to Customers upon request, with the exclusion of the Collection of Construction

and Demolition Waste. Contractor must deliver a temporary Bin to a Customer within twenty-four (24) hours of request (Saturdays, Sundays and holidays excluded).

Maximum rates for temporary Bin Service are listed in the Approved Rate Schedule. Per pull fee includes service, transportation, disposal, delivery and rental for seven days. Contractor may charge a daily rental fee for each day beyond seven days in which a Bin is not serviced, in accordance with the Approved Rate Schedule.

5.4.8 Bin Pushout/Scout Service

Contractor may not charge a fee for pushing or rolling Bins to point of Collection, or for the use of scout vehicles to position Bins for Collection.

If Contractor must place a Bin in the public right-of-way to facilitate Collection, Contractor shall not permit the Bin to remain in the public right-of-way over one hour. If the Bin is stored under a shoot for Solid Waste Collection, the Bin must be serviced and returned immediately.

5.4.9 Locking Bins

Contractor shall provide locking Bin Service (providing the hasp and lock and servicing the lock) to Customers that request such service in accordance with the Approved Rate Schedule. Contractor shall ensure that Bins provided are capable of being locked.

5.4.10 Redelivery/Return Trip Fee

Contractor may charge a fee, per the Approved Rate Schedule, in the event that Contractor arrives on time for a scheduled Collection of Bins or Roll-Off Boxes, is impeded from Collection due to Container being blocked or otherwise unable to be Collected due to issues within the Customer's control, and Contractor must return a second time for Collection. Charge may be assessed for the trip, not per Bin, in the event of a Customer with multiple Bins.

5.5 Recycling

5.5.1 Recyclables Collection for Residential Cart Customers

Contractor shall provide Recyclable Material Collection service not less than once per week to all Customers at Residential Dwelling Units receiving weekly Refuse Cart service under Section 5.4.1, on the same day of the week as Refuse Collection. Recyclables Collection vehicles shall be equipped with mechanized lifting capability for Carts.

Contractor shall have a Recycling program whereby it, at a minimum, Collects textiles, mixed waste paper (including newspaper, ledger, writing and copying paper, computer, junk mail, magazines, glossy paper, paperback books, cereal boxes, envelopes, paper shopping bags, wrapping paper, phone books), corrugated cardboard, aluminum cans and foil, glass jars and bottles, Steel (tin) food cans, scrap metal, coat hangers, bi-metal beverage cans, empty steel aerosol containers, empty paint cans and Types #1 through #7 plastics, juice boxes and milk cartons and all other materials that can be recovered at the local processing Facility used by Contractor.

Contractor will update public education materials accordingly as new items are added to those recovered by the Facility.

Customers that regularly fill their Recycling Cart(s) may request additional Cart(s) as necessary to service the waste stream generated at no additional charge.

5.5.2 Recyclables Cart Distribution

Customers have been issued Carts under the prior service contract. Contractor may continue to use the Recyclables Carts in distribution as long as they remain in good repair and appearance and meet all specifications of Section 9.3.2. Contractor shall distribute Carts to new Customers or Customers in need of replacement Carts. All Containers, upon distribution in City, shall become the property of City. Customers may request 32, 64 or 96-gallon Recycling Carts. Customers may request an exchange of Cart sizes once every six months at no additional charge. Additional exchanges (excluding exchanges due to damage) may be charged for in accordance with Appendix E. An exchange will consist of all Cart exchanges request at the same time, and may include exchanges for multiple Cart types (Refuse, Recycling, Green Waste).

5.5.3 Recyclables Collection for Residential Bin and Commercial Customers

Contractor agrees to provide unlimited Recycling Collection service to all Residential Bin Customers and all Commercial Customers that request such service from the Contractor. Contractor may assess no charge for providing this Recyclables Collection service, with the exception of the per Dwelling Unit Recyclables Collection fee on all Residential Bin Customers as included in the approved rate schedule. Contractor may purchase Recyclable Materials from its Customers as well. The Contractor agrees to provide Recycling Bins or Carts to such Customers in sufficient quantities and sizes to meet the Recycling needs of each Customer; City may direct Contractor as to the number and size of Cart or Bin to be used and/or frequency of Collection. Recycling Collection programs shall be made available at a minimum

for the same materials as included above in Section 5.5.1 for the Residential Cart Customer program.

Contractor also agrees to make programs available for all other Recyclable Materials for which it has established markets. The Contractor shall notify all Customers of the availability of free Recycling Collection programs via a mailed notice once prior to the start of services under this Agreement and at least annually for the remainder of the Agreement.

Contractor shall contact all Residential Bin and all Commercial Customer accounts via telephone call and/or site visit in an effort to establish Recycling programs within twelve months of the start of service under this Agreement. Contractor shall include a contact log in its Annual Report to the City, detailing:

- a. Name, telephone number and address (and e-mail if possible) of Customer representative contacted
- b. Date and time of contact
- c. Contactor's employee's name that made or attempted the contact
- d. Results of the contact (e.g. establishment of program including new Recycling service levels, no new program, no response from Customer)
- e. Form of contact (site visit, telephone call).

All contacts shall result in a site visit, unless Customer refused a visit or did not respond to contact, and Contractor provides the above information related to the contact in which the refusal was made.

Contractor shall continue to contact new Customers and revisit non-participating Customers throughout the Term to encourage implementation of Recycling programs. Contractor shall contact Customers with established programs to determine if adjustments should be made to the program, such as additional Containers.

5.5.4 Processing of Bin Waste

5.5.4.1 Processing of Commercial Bin Waste

Contractor shall send 75% of Commercial Bin Refuse Collected by weight for processing to recover Recyclables, with a minimum recovery rate of 25%. Contractor shall maintain processing/disposal weight tickets by route for City review upon request to confirm the minimum tonnage was processed. Contractor may request approval from City as to a

methodology to be used to divide tonnage on any mixed Commercial and Residential Bin routes, or Contractor shall maintain separate routes for Commercial and Residential Bin accounts.

5.5.4.2 Processing of Multi-Family Bin Waste

If requested by City, Contractor shall send 100% of Multi-Family Bin Waste for processing to recover Recyclable Materials prior to landfilling, with a minimum recovery rate of 40%. Upon implementation of this service, monthly Multi-Family Bin rates (excluding per dwelling unit Recycling fee) will be adjusted by 20% in accordance with page E-4 the approved rate schedule.

5.5.5 Waste-To-Energy

Contractor shall send a sufficient number of tons of Refuse from which Recyclables have been removed to a Waste-to-Energy facility for the City to receive 13,000 tons of diversion credit per year as measured on an annual basis. For each ton for which the Contractor falls short of this 13,000 tons in any calendar year, Contractor shall owe City liquidated damages per Section 10.4, or the additional cost avoided by Contractor by landfilling versus diverting this Refuse, whichever is higher. At any time under this Agreement, City may request that this annual requirement be increased up to the maximum amount permitted to receive full diversion credit under the Act. To the extent that diversion from the additional tonnage sent to a Waste-to-Energy facility is necessary to meet the diversion requirements of Section 5.5.6 of this Agreement, there will be no rate adjustment. To the extent the additional tonnage is sent to a Waste-to-Energy facility due to City's intent to increase diversion above levels required under Section 5.5.6, Contractor will receive a corresponding rate adjustment equal to the actual change in costs.

In the event that CalRecycle limits or eliminates diversion credit for transformation, beyond limitations in effect at the start of this Agreement, Contractor and City shall negotiate changes to affected rates and service requirements, which may include but are not limited to changing diversion programs, or reducing diversion requirements and corresponding rates.

5.5.6 Minimum Recycling Requirements

Contractor shall divert from landfilling a minimum of 59% of all Solid Waste it Collects under this Agreement. Compliance will be measured, initially, for the first period from July 1, 2011 to December 31, 2011, and subsequently on a calendar year basis. Recycling of materials not Collected by the Contractor is not to be considered in determining compliance with this requirement. Neither tonnage Collected outside of this exclusive Agreement, including

Construction and Demolition Waste and non-City Roll-Off Box services, nor third party Diversion shall be counted in determining compliance with this section. Liquidated damages shall be assessed under Section 10.4 for failure to meet this goal.

5.5.7 Optional Food Waste Diversion Programs

City reserves the right to require Contractor to implement a program to divert food waste Collected from restaurants and/or from residents. Contractor would be entitled to a rate adjustment for the reasonable incremental costs incurred in processing and transporting the waste. Transportation costs may increase or decrease, depending upon the location of the food waste processing Facility to be used.

5.6 Green Waste Program

5.6.1 Green Waste Collection for Residential Cart Customers

Contractor shall provide Green Waste Collection service not less than once per week to all Customers at Residential Dwelling Units receiving weekly Refuse Cart service under Section 5.4.1, on the same day of the week as Refuse Collection. Green Waste Collection vehicles shall be equipped with mechanized lifting capability for Carts. Contractor shall have a Green Waste Recycling program whereby it, at a minimum, Collects the types of Green Waste defined in Section 1.48. Contractor shall Collect Green Waste placed in Green Waste Cart(s) and all bundled Green Waste Overages as defined in Section 1.49, provided Green Waste Overages are not the result of landscape construction.

Customers that regularly fill their Green Waste Cart(s) may request additional Cart(s) as necessary to service the waste stream generated at no additional charge.

5.6.2 Green Waste Cart Distribution

Customers have been issued Green Waste Carts under the prior service contract which Contractor may initially use for Green Waste Collection. Within 12 months of the start of service under this Agreement, Contractor shall replace all Green Waste Carts with new Carts that meet the requirements of Section 9.3.2. All Carts, upon distribution in the City shall become property of the City.

Customers may request 32, 64 or 96-gallon Green Waste Carts. Customers may request an exchange of Cart sizes every six months at no additional charge. Additional exchanges may be charged for in accordance with Appendix E. An exchange will consist of all Cart exchanges request at the same time, and may include exchanges for multiple Cart types (Refuse, Recycling, Green Waste).

5.6.3 Backyard Compost Program

Contractor shall provide a composting bin and/or worm bin to each Residential Customer that request one, and bill the Customer \$35, or another amount as directed by City.

Compost/worm bins supplied under this section shall be approximately 30"x30", with a lid, similar to a BioStack bin, unless otherwise directed by City; Contractor shall obtain written City approval prior to ordering bins, and City may select the bin. The difference between the amount billed to the Customer and the actual cost of the bin to the Contractor (excluding delivery or other associated costs) shall be reimbursed to Contractor by the City. City may inform Contractor as to an annual cap or overall cap on the number to be distributed.

5.6.4 Green Waste Collection for Residential Bin and Commercial Customers

Contractor shall provide and service Green Waste Carts to all Residential Bin Customers and Commercial Customers, that request them. Contract may assess a monthly fee per Cart in accordance with the Approved Rate Schedule.

5.6.5 End Uses for Green Waste

Contractor shall divert Green Waste materials Collected through weekly Cart and bundle Collection, Bin Collection, holiday tree Collection, City street sweepings, and mixed waste processing from Disposal. Contractor must provide end uses for Green Waste that maximize Diversion credits for City according to regulations established by the California Integrated Waste Management Board. Green Waste may be used as ADC only to the extent that the City will get full Diversion credit for its use. Contractor is responsible for monitoring how the Green Waste will be diverted at selected facilities and for selecting alternative facilities if necessary to ensure full Diversion credit. Failure to do so places the Contractor in default. City has the option, but not obligation, to direct Contractor where to deliver the material.

5.6.6 Compost Give-A-Way

Twice per calendar year, Contractor will provide two 40-yard containers of compost at a location selected and provided by City. Residents shall receive this compost free of charge, using residents' own bags, on a first-come first-served basis. Contractor is responsible for staffing and cleaning up the event site, and for removing any unclaimed compost and compost containers at the end of the events.

5.7 Bulky Waste Collections

5.7.1 Residential Bulky Waste Collection

Contractor shall provide Bulky Waste pickup service to all Residential Dwelling Units (both Cart and Bin Residential Customers) at no additional charge for an unlimited number of pickups, up to four items Collected at each pickup. For Multi-Family Customers, either property managers or individual Dwelling Units may call in for Collection. Contractor may instruct Customers to provide Contractor with a minimum of 48 hours' notice. Bulky Waste shall be Collected on the Customer's regular Collection day, or on a City-wide fixed Collection day if approved by City. Contractor shall Collect all Bulky Waste as defined in Section 1.11 including items referred to as electronic waste or "e-waste." The following provisions shall apply to this program:

- No single item that cannot be handled by two workers will be accepted.
- The following items will not be picked up: Hazardous Waste, including waste oil or anti-freeze, provided that they are not defined as Bulky Waste per Section 1.11. For the purposes of this section, universal wastes, and televisions, monitors and other items referred to as "e-waste" shall not be considered Hazardous Waste.
- Contractor shall record by class and weight (in tons) the Solid Waste Collected from Bulky Waste pickups. Contractor shall record the kinds and weights (in tons) of this Solid Waste that is diverted from the landfill through Recycling, reuse, Transformation or other means of Diversion.

5.7.2 Commercial Bulky Waste Collection

Commercial Customers may receive Bulky Waste Collection under the same terms for a fee, in accordance with the Approved Rate Schedule in Appendix E.

5.7.3 Bulky Waste Diversion

Bulky Waste Collected by Contractor in accordance with Section 5.7.1, or otherwise Collected under this Agreement, may not be landfilled or disposed of until the following hierarchy of Diversion efforts has been followed by Contractor:

- 1) Reuse as is
- 2) Disassemble for reuse or Recycling
- 3) Recycle

4) Disposal

This hierarchy is intended to preclude the use of front or rear loading packer vehicles for Bulky Waste unless the compaction mechanism is not used to compact the Bulky Waste, unless they have been designated for Disposal.

The City, at its sole discretion, may require the Contractor to schedule Bulky Waste collection services to allow reusers and recyclers (both for-profit and not-for-profit) to have first opportunity to collect Bulky Waste from the curb before the Contractor collects the remaining Bulky Waste.

5.8 Household Hazardous Waste Events

Contractor shall conduct two HHW drop-off events per year and shall be compensated for each event conducted in accordance with the fee schedule in Appendix E; this fee shall be adjusted annually based upon the percentage change in the average annual CPI Less Food and Energy for the calendar year ended the previous December over the average annual CPI Less Food and Energy for the preceding year, adjusted at the same time and in a similar manner to Collection rates per Appendix B. Events shall be held in accordance with the requirements in Appendix D.

5.9 Disposal and Documentation of Electronic and Other Special Wastes

Contractor shall divert waste requiring special handling, such as electronic waste, or “e-waste,” Collected in accordance with Sections 5.7, 5.8, 5.11 and 5.15, or by other means under this Agreement, by taking these goods to a properly permitted Facility, and not by landfilling.

Contractor may encourage Customers through public education materials to bring small items requiring special handling, such as fluorescent bulbs or batteries, to a local HHW drop-off center or through door-to-door Collection services, but will properly process such material received through the provision of services under this Agreement at no additional charge.

Contractor shall provide a signed statement verifying that Contractor has delivered all wastes requiring special handling, such as electronic waste and other HHW wastes, to properly licensed Facilities for legal disposal and processing, indicating which Facilities were used, and confirming that Contractor has done proper due diligence to determine that the Facilities used are legally disposing of materials Contractor delivers.

5.10 HHW Collection

5.10.1 Residential Door-to-Door HHW Collection [Optional Service]

City may request Contractor to implement the following Residential HHW Collection program. The option to implement the HHW program remains available to the City throughout the term of the Agreement.

Residents (both Cart and Bin Customers) may call Contractor to request Collection of HHW from their homes at no additional charge. Residents are entitled to unlimited Collections. Items to be Collected shall include, but are not limited to: Sharps, non-controlled pharmaceuticals, paint and paint products, used oil and used oil filters, chlorine, pool acid and other pool products, pesticides, household batteries, fluorescent bulbs and lamps, items with mercury, non-empty aerosol cans, and electronic devices.

Contractor shall mail residents information announcing, and providing instruction on how to use, the new program. HHW Collection shall take place on the Customer's regularly scheduled Collection day. Residents shall call Contractor to schedule their pickup 48 hours in advance of their scheduled Collection day. Collection shall take place on the scheduled Collection day at a mutually agreed upon location.

Upon implementation of this program, Contractor shall be entitled to additional compensation based on the HHW rate included in the approved rate schedule in Appendix E. The Residential door-to-door HHW collection rate shall adjust solely in accordance with the percentage rate changes to the "all other" cost component as described in Appendix B, Section B.4.

5.10.2 Commercial HHW Collection

Contractor shall Collect HHW from Commercial Customers including, but not limited to, items identified under Section 5.10.1 above, and boat batteries, in accordance with the approved rate schedule. Customers shall call Contractor to schedule Collection, which shall be provided Monday through Friday, within 48 hours of call-in.

5.11 Abandoned Item Collection

Commencing on the Service Date, the Contractor shall collect and remove from the City's streets, alleys, parks and other public areas which are located in the City Bulky Waste in any volume which has been unlawfully abandoned or discarded at no additional charge. The City shall set all specifications for unlawfully discarded Bulky Waste collections under which the Contractor shall operate, and decisions of the City shall be final with respect to such operating specifications. Any such specifications shall be consistent with the other terms of this

Agreement. The Contractor shall respond within a reasonable time to calls from the Public Works Director to collect and dispose of such discarded or abandoned Bulky Waste; provided, however that in no event shall the response time exceed 48 hours. The Contractor shall create a specific work order in response to each call received by the Public Works Director with a monthly "Summary of Unlawfully Discarded Bulky Waste Work Order Completed". The summary shall include but not be limited to the date, time, hours spent, and type of unlawfully discarded Bulky Waste collected and disposed of. Contractor will properly divert from landfilling or Dispose of such items in accordance with Sections 5.7.3 and 5.9.

5.12 Holiday Tree Collection

5.12.1 Residential Curbside Collection

The Contractor shall collect all Holiday trees discarded by any Residential Cart Service Customer on the first three regularly scheduled collection days after Christmas Day, or such other days as agreed to by the City and the Contractor, free of any additional charge to the City or any Service Recipient.

5.12.2 Holiday Tree Drop-Off Site

The Contractor shall establish three (3) collection locations, to be determined by the City and the Contractor, for the collection of Holiday trees. Such locations shall contain Roll-Off Containers or another Collection mechanism for the Collection of Holiday trees from Residential and Commercial Customers on the first three weekends (Saturday and Sunday) after Christmas Day. Each collection location shall be open from 9.00 am. to 4:00 p.m. Each collection location shall have one employee of the Contractor present at all times the Collection location is open in order to assist Service Recipients.

5.13 Emergency Services

Contractor will assist City at the City's request with emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, riot or civil disturbance), or as otherwise determined necessary by the City, by providing Collection equipment and drivers normally assigned to City. Contractor may charge City for actual Disposal costs, plus service rates in accordance with the Approved Rate Schedule. Contractor will provide such services within twenty-four (24) hours of notification by the City. Such services may entail collections; and hauling Solid Waste, Source-Separated Recyclable Materials, and/or Bulky Goods. The City may also require the Contractor to perform other assignments necessitated by the nature of the emergency.

5.14 Service to Redondo Beach Unified School District

The Contractor shall provide Solid Waste Handling Services, including Refuse, Recyclables and Green Waste Collection in Bins and Carts, excluding roll-off container service, to the elementary and middle schools and Redondo Beach High School of the Redondo Beach Unified School District at no additional charge to the City, School District or ratepayers; provided, however, that the Contractor acknowledges that such schools are not subject to the City grant of the exclusive franchise, and that such schools have the right to receive services from other persons.

5.15 Municipal Services.

Contractor shall provide the following services for the City at no additional charge to the City (unless otherwise indicated) or ratepayers:

5.15.1 City Facilities Collection

Contractor shall Collect and dispose of all Refuse, Recyclable Material, and Green Waste put in Containers for Collection at Premises owned and/or operated by the City now and in the future at no charge. Service levels and number of facilities serviced may increase during the Term of this Agreement without any additional compensation paid to the Contractor. Such Premises include, but are not limited to, City Hall, City offices, parks and parks yard, City yard, Collection from Harbor area and street maintenance operations. Collections shall be scheduled at a time mutually agreed upon by Contractor and City.

5.15.2 City-Generated Hazardous Waste Collection

Contractor shall Collect and properly Dispose of universal wastes such as fluorescent bulbs and batteries, electronic waste, paints and other items that would be considered Household Hazardous Waste if generated at a Residential Premises, that are generated by, and placed for Collection at, City facilities, or Collected as abandoned items under Section 5.11.

5.15.3 City Projects

Contractor shall provide Collection, Disposal and processing services using Bins or Carts for all public works or other projects conducted by City staff, including Construction and Demolition Waste projects. This debris may be placed in Containers at the City yard, or Contractor may be required to place Bins or Carts at the site of the project. Collection services for projects conducted by outside vendors hired by the City are not included under this section.

Additionally, Contractor shall provide a drop-off location, and an account to be paid by Contractor, for waste generated by City crews at American Waste Transfer Station at 1449 W. Rosecrans Ave., Gardena, where City-generated Solid Waste will be accepted at no additional charge to City or ratepayers.

5.15.4 Street Sweepings

Contractor shall Collect and process/dispose of street sweepings placed in the Contractor-provided Roll-Off Boxes or other City-approved Containers at the City Yard at no additional charge. Contractor shall process this material to ensure that the City receives full Diversion credit, such as composting. Use of Green Waste as alternative daily cover at landfills is permitted only to the extent that full Diversion credit is received and the material does not count as Disposal.

Contractor shall service and return all emptied Roll-Off Boxes to the City yard for the Collection of street sweepings by 9:00 a.m. each Monday through Friday.

5.15.5 Extra Services

Periodic repair, relocation, placement, and additional collections will also be provided on an as-needed basis at no additional charge.

5.15.6 City Litter Containers

The Contractor shall provide Refuse and Recyclables Collection service for all City public litter Containers currently in service or which may be placed in service in the future at no additional charge. Number, location and frequency of Collection from public litter Containers may vary over the Agreement Term; no corresponding rate adjustment shall be made. Contractor is responsible for ensuring that litter Containers are Collected with sufficient frequency that Containers do not fill. Public street litter containers are located throughout the City. City cans in the City's Harbor area shall be collected at least twice per week in the winter and three times per week from June through September, but may require additional service at no additional charge.

5.15.7 Pier Compactor

Contractor shall service the City's compactor Roll-Off Box at the pier daily or as otherwise instructed by the City. Compactor shall be emptied and returned by no later than 11:00 a.m. each day. Contractor shall be compensated on a per pull plus Disposal basis in accordance with the Approved Rate Schedule in Appendix E. The City shall provide the compactor for

centralized collection at the Pier. The Contractor shall steam clean the compactor after each pull. See Section 10.4 for liquidated damages for failure to steam clean.

5.15.8 Pier Collection Containers

The City uses 33 Collection Containers at the Pier, which are 2 or 3-cubic yards in size. These Containers have been retrofitted to fit trailer vehicles operated by the City on the Pier. City crews are responsible for the daily movement of trash from locations on the Pier to the Pier compactor Roll-Off Box (see Section 5.15.7 above) using these Containers. The Contractor shall provide maintenance and replacement of these containers as needed, and steam cleaning of these containers on a quarterly basis. The type and size of replacement Containers must be approved by the Director of Public Works prior to the purchase of these Containers.

5.15.9 Container Cleaning

Contractor is responsible for the cleaning of all Containers used by City and/or Contractor in the provision of Solid Waste Handling Services under this Agreement.

5.15.10 City Sponsored Events

Contractor shall provide Solid Waste and Recycling Collection and Disposal/processing service for City-sponsored events. This shall include providing Containers (Bins, Roll-off Boxes, clearly labeled Recycling Containers and cardboard waste boxes with liners) to Collect and dispose of, or process, all Solid Waste and Recyclable Materials. The Contractor shall provide these services at City-sponsored events, at no cost to City or ratepayers. City-sponsored events include, but are not limited to:

- Public Safety Fair
- Spring Fest
- Fourth of July
- Lobster Festival
- Earth Day
- 10K Run

5.15.11 Shred Day

Contractor will conduct one shred day per year, on a City-approved day, at a City-provided location at no additional cost. City will inform Contractor of the time at which each event will begin, and each event shall last for eight hours. Contractor shall be on-site for a sufficient time before and after the event to set up and clean up. Contractor shall provide staff and equipment to Collect all paper delivered by anyone that resides or operates a business in the City.

Contractor will shred paper in manner that guarantees confidentiality and destruction of the documents, and diverts the shredded material from landfilling. Contractor will publicize the event through its mailers, contacting local business groups and placing local ads.

5.15.12 Large Venue Event Assistance, Event Recycling

Contractor will assist planners of large venue events with reporting and planning needs as may be useful in meeting the requirements of AB 2176 at no additional charge. Contractor shall provide Recycling services upon request to special event planners.

Refuse Collection and Disposal services at such events shall be provided as otherwise described in this Agreement, in accordance with Section 5.15.10 for City-sponsored events and/or Exhibit E for other services to be provided within the scope of this Agreement, subject to scope limitations described in Section 4.3.

5.15.13 Optional Sharps Collection

City may require Contractor to implement a Sharps Collection program in the future, at which time the Contractor will be entitled to a rate adjustment for the additional costs.

5.16 Push-Out/Push-Back Service

Contractor shall provide push-out/push-back service to Customers requesting this service. Contractor will remove Refuse, Recyclable and Green Waste Carts and Green Waste bundles from Customer's storage area, place them out for Collection, and return Containers to Customer's storage area after Collection, ensuring that all doors or gates are closed securely. Contractor may charge Customers for this service in accordance with the Approved Rate Schedule, unless Customer is entitled to this service at no additional cost under Section 5.17. The Contractor shall bill such Customers directly for backyard service in accordance with the Service Fee Schedule on Cost Sheet D.

5.17 Push-Out/Push-Back Service for Elderly or Disabled

Contractor shall provide Customers who have difficulty moving their carts to the designated point of Collection due to age or physical disability with push-out/push-back service, as described in Section 5.16, at no additional charge. In order to qualify for such service, Customers must have been issued a handicap placard from the Department of Motor Vehicles, receive written verification from a medical doctor, or otherwise obtain approval to receive such service from the City. Additionally, free push-out/push-back service need not be provided if an able-bodied person resides with the Customer. The Contractor shall notify all Customers of the availability of free push-out/push-back service as described in this section,

and may require Customers requesting free service to execute a form (to be provided by the Contractor) certifying the reason such Customers qualify for free push-out/push-back service. The form shall be subject to the approval of the City.

5.18 City's Right to Direct Changes

5.18.1 General

City may direct Contractor to perform additional services (including new Diversion programs, etc.) or modify the manner in which it performs existing services or Bills for services. Pilot programs and innovative services which may entail new Collection methods, and different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which City may direct. Contractor acknowledges that State law may increase the Diversion requirement during the Term of this Agreement and Contractor agrees to propose services to meet such Diversion requirements. Contractor shall be entitled to an adjustment in its Contractor Compensation for providing such additional or modified services, including a profit factor equal to ten percent (10%) of the incremental cost of such additional or modified services. City may utilize cost components included in the Contractor's Proposal in calculating equitable rate adjustments. If City and Contractor cannot agree on compensation for new or additional services, then City may contract with other parties for such services, which shall be considered exempt from the exclusivity provisions of this Agreement.

5.18.2 New Diversion Programs

Contractor shall present, within sixty (60) days of a request to do so by City, a proposal to provide additional or expanded Diversion services. The proposal shall contain a complete description of the following:

- Collection methodology to be employed (equipment, manpower, etc.).
- Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- Labor requirements (number of employees by classification).
- Type(s) of Containers to be utilized.
- Type(s) of material to be Collected.
- Provision for program publicity/education/marketing.

- Program costs and impact to ratepayers, including a three-year projection of the financial results of the program's operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

ARTICLE VI

SOLID WASTE COLLECTION SERVICE OPERATING REQUIREMENTS

6.1 Collection Routes.

The Contractor shall establish and maintain Collection routes in such manner to provide for the uniform and efficient collection of City Solid Waste from all Residential Premises and Commercial Premises on a Monday-through-Saturday basis. Residential Cart Collection routes shall maintain the Collection days in effect immediately prior to the start of service under this Agreement, unless and until City approves a change request. See Appendix A for City map by Residential Cart Collection day. City shall not be obligated to adjust parking restrictions to accommodate Collection routes. The Contractor shall not schedule City Solid Waste collection on Sundays, except as specified in this Agreement or as authorized by the Public Works Director. At all Residential Premises and Commercial Premises which require more than one (1) collection per week, the Contractor shall schedule collections at equally spaced intervals throughout the work week, or as approved by the Public Works Director.

City shall approve the vehicle type and routing plan on one-way streets and in hard-to-service areas identified by the City, including scout vehicles and specialty collection trucks.

6.2 Compliance with Transition Plan and Services

In performing its obligations under this Agreement, the Contractor shall comply with the Transition Plan contained in Appendix H and shall at all times comply with the Service requirements contained in Article V of this Agreement. Failure to meet any deadlines or requirements in the Transition Plan may result in the imposition of liquidated damages per Section 10.4. Any changes to services shall be reflected in a formal amendment to this Agreement. The City shall have the right at any time to direct the Contractor to change, amend, modify or otherwise revise the services; provided, however, that the Contractor shall be entitled to an adjustment in an amount equal to any increased costs resulting from such amendment, modification or revision of the services to the extent provided in Section 5.18 hereof. The Contractor also may request the City to approve any such revision, which the Contractor may propose. The City's approval of any such request may be withheld or delayed in the City's sole and absolute discretion. Any such revision directed or approved by the City shall be incorporated into this Agreement and shall be evidenced by formal amendment

thereto. Upon such direction or approval by the City, the Contractor shall notify all affected Service Recipients at least seven (7) days prior to implementing the revision.

6.3 Route Information.

The Contractor shall provide to the City a written description and maps describing areas of collection for Single-Family Home Service Recipients, including but not limited to, day of the week of service, approximate time of collection (a.m. or p.m.) and regularly assigned equipment by identification number. Upon the request of the City the Contractor shall also provide routing (start point, end point, and actual street-by-street course) and route numbers with respect to Single-Family Home Service Recipients. The maps submitted to the City shall be the most current City of Redondo Beach house number maps distributed by City's Department of Engineering. In addition, with respect to Multi-Family Building and Commercial Service Recipients, the Contractor shall provide the City with a listing of such Service Recipients, the day(s) of the week each such Service Recipient receives services, and the type of service each such Service Recipient receives. Written descriptions and maps shall be delivered to the City within four (4) weeks after start of service. (The City may make such materials available to Customers upon request.) To permit the City to analyze traffic impacts, the Contractor shall submit to the City any proposed change to routes (including, but not limited to, boundaries and route numbers) not less than thirty (30) calendar days prior to the proposed date of the change. No changes may be made prior to the Contractor's receipt of written approval from the City, which approval may be withheld at the City's discretion, and prior to providing affected Customers with seven days notice of the change. If requested by the City Council, any major changes in residential routes shall be the subject of a public hearing. All such maps and other information shall be kept current.

6.4 Dedicated Routes

Solid Waste Collected in the City may not be commingled in Collection vehicles with Solid Waste from other jurisdictions. All routes shall be dedicated exclusively to City of Redondo Beach Solid Waste. One-time or temporary commingling of routes due to a vehicle breakdown or emergency may be permitted provided Contractor receives advanced approval from the Public Works Director or assignee, or if the breakdown or emergency requires a one-time commingling of routes at a time when the Public Works Director or assignee is not accessible, that Contractor notify City as soon as possible.

6.5 Route Audit

Once during the first year, and subsequently upon City request, but no more than once every three years, Contractor shall conduct an audit of its Collection routes in the City. City may use

information from the audit to develop a request for proposals for a new service provider. City may instruct Contractor when to conduct the audit in order for the results to be available for use in preparation of a request for proposals or for other City uses. City may also instruct Contractor to conduct an audit at a time that would produce the most accurate Customer service information for a new service provider to use in establishing service with Customers. In setting these audit dates, City will establish due dates for Contractor providing routing and account information, and later, the report, to City.

The route audit, at minimum, shall consist of an independent physical observation by person(s) other than the route driver of each Customer in City. This person(s) is to be approved in advance by City. The route audit information shall include, as a minimum, the following information for each account:

For Residential Cart Customers:

- Route Number;
- Truck Number;
- Number and size of Carts by waste stream (Refuse, Recycling, Green Waste)
- Cart condition;

For Residential Bin and Commercial Customers:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account Service Address;
- Account Type (Residential, Commercial);
- Service Level per Contractor Billing system (Quantity, Size, Frequency);
- Observed Containers (Quantity and Size).
- Container condition;
- Proper signage; and,
- Graffiti.

Within thirty (30) days after the completion of the route audit, Contractor shall submit to City a report summarizing the results of the audit. This summary shall include:

- Identification of the routes;
- Route map;
- Truck numbers;
- Number of accounts, by route and in total (Cart, Residential Bin, Commercial);
- Confirmation that all routes are dedicated exclusively to City Customers;

- Number and type of exceptions observed;
- Total monthly service charge (Cart, Residential Bin, Commercial), pre-audit;
- Total monthly service charge (Cart, Residential Bin, Commercial), post-audit (subsequent to corrections of identified exceptions); and,

The report shall include a description of the procedures followed to complete the route audit. This description shall include the names and titles of those supervising the route audits and the name and titles of those performing the observations.

The report shall also include a description of the changes and Contractor's plans to resolve the exceptions. The results of the audit, and supporting back-up data, shall be available for review by City or its representative.

6.6 Service Exceptions; Hazardous Waste Notifications

A. Failure to Collect. When Solid Waste is not Collected from any Solid Waste Service Recipient, Contractor shall notify its Service Recipient in writing, at the time Collection is not made, through the use of a "red tag" or otherwise, of the reasons why the Collection was not made.

B. Hazardous Waste Inspection and Reporting. Contractor reserves the right to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Hazardous Waste and the right not to Collect Hazardous Waste put out with Solid Waste. Contractor shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found or observed in Solid Waste anywhere within City. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Contractor will immediately notify the Public Works Director. Contractor shall implement and maintain a training program that will assist its employees in identifying and properly disposing of any Hazardous Waste that may come into their possession.

C. Hazardous Waste Diversion Records. Contractor shall maintain records showing the types and quantities, if any, of Hazardous Waste found in Solid Waste and which was inadvertently Collected from Service Recipients within City, but diverted from landfilling.

6.7 Routing and Coordination With Street Sweeping Services

Contractor shall provide all routes and route schedules to the City and work with City to coordinate and resolve conflicts with street sweeping schedules.

6.8 Report of Accumulation of Solid Waste; Unauthorized Dumping

Contractor shall direct its drivers to note (1) the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and (2) the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to City within one (1) working day of such observation.

6.9 Hours of Service

The Contractor shall not perform any collections between the hours of 6:00 p.m. and 7:00 a.m. in residential areas or commercial areas, which are 200 feet from residential areas. No Contractor-owned vehicle shall operate before 6:00 a.m. or after 6:00 p.m. in any area of the City, excluding vehicles which do not collect or transport Solid Waste or Containers. Contractor shall not make exceptions to these Collection times without advance written approval from the City. The Contractor shall arrange with the Service Recipients to make collections on the same day of the week, regardless of weather conditions. The Public Works Director may change the collection time as required by the needs of the Service Recipients or the Contractor.

Contractor shall not Collect Solid Waste from Customers located on Pacific Coast Highway or on Prospect Ave. (both North and South) between the hours of 7:30 a.m. and 9:30 a.m. and between 3:00 p.m. and 5:00 p.m.

6.10 Missed Pickups

The failure of the Contractor to collect Solid Waste, Source-Separated Recyclable Materials or Green Waste which has been properly set-out for collection shall be considered a missed collection, and the Contractor shall collect the material from the Service Recipient within twenty-four (24) hours of notification from Customer or City of the missed collection.

6.11 Holidays.

Collection of City Solid Waste shall not occur on the following legal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, except in case of emergency or as otherwise required by the Public Works Director. Whenever

a regular collection falls on such a holiday, the collection shall be made on the following working day, and collections throughout the City shall become current within one (1) week thereafter. Collection shall not be rescheduled when the holiday falls on a Sunday, unless otherwise agreed to by City and Contractor. Holidays will not count towards any response time requirements placed on the Contractor. Commercial Service Recipients that subscribe to seven day per week collection shall receive collection on the holiday and such service shall not be rescheduled.

6.12 Collection Locations

6.12.1 General

The Public Works Director will establish the collection location for all Containers. The Contractor is responsible for the collection of all City Solid Waste placed for collection in a legal manner, at all such designated collection locations. The Contractor shall immediately notify the Public Works Director of any condition at or near any collection location, which creates a safety hazard or accessibility problem. Upon authorization by the Public Works Director, the Contractor shall discontinue collection for any such location until the safety hazard or accessibility problem is corrected.

6.12.2 Enclosures

Where the collection location is within an enclosure constructed pursuant to the requirements of the City, the Contractor shall be responsible for the removal and replacement of all Containers placed therein. The Contractor shall use sufficient care in the handling of such Containers so as to prevent any damage to the enclosure, the enclosure doors, and adjacent facilities or improvements. The Contractor shall repair at its own expense, and within thirty (30) working days after notification from the Public Works Director, any such enclosure or adjacent facilities or improvements damaged by it. The Public Works Director shall resolve any disputes relating to such damage and the Contractor agrees to abide by such decision.

6.12.3 Residential Cart Placement

Carts shall be placed for Collection at a location designated by the City, which may be on the curb verses in the street, in an alley, or in a location requiring the driver to leave the Collection vehicle to move the Carts for Collection and to return the Carts to their original location due to parked cars, space restraints or other reasons. Collection point is intended to be in the public right-of-way and not on private property, unless Push-Out/Push-Back Service is provided in accordance with Section 5.16 or 5.17.

6.13 General Requirements Relating to Collection

6.13.1 Noise

The Contractor shall conduct all collection of Solid Waste in as quiet a manner as possible. The noise level generated by equipment or vehicles shall not exceed a single-event noise level of seventy-five (75) decibels at a distance of twenty-five feet from the collection vehicles.

Contractor shall submit to City, upon City's request, a certificate of vehicle noise level testing by an independent testing entity approved by the City. Each vehicle used for the collection, hauling and disposal services identified in this Agreement shall be equipped with an audible warning device that is activated when the vehicle is backing up.

6.13.2 Clean Up

The Contractor shall cause all spills of City Solid Waste occurring during the collection process to be cleaned up immediately upon the occurrence of the spill. Contractor shall close all gates after making collections and shall avoid crossing private or public planting areas and grounds or jumping over hedges and fences. All Containers shall be returned by the Contractor to their designated collection location in an upright and orderly fashion.

6.13.3 Improper Loading of Containers

The Contractor may decline to collect any City Solid Waste that (1) has not been properly loaded into containers, (2) has been overloaded in containers by weight or volume, or (3) has been compacted or otherwise placed, kept or accumulated in a manner such that the City Solid Waste will not, of its own weight, fall out of the Container in which it is placed when such Container is turned upside down.

6.13.4 Authorized Non-Collection of Certain Waste

The Contractor will not be required to remove Construction and Demolition Waste under this Agreement except when presented for collection in approved debris containers and less than 1 cubic yard in capacity. In addition, Contractor shall not be required to remove dead animals or other City Solid Waste from any place where highly infectious or contagious disease has been present.

6.14 Warning Notice for Un-Collected Solid Waste

Contractor shall place a red tag or other warning notice at least 2-7/8" by 5-3/4" approved by the City on all Residential and Commercial Refuse, Recyclable Material or Green Waste Containers or items that are not Collected. Tag/notice must indicate to the Customer why the

load was not Collected and provide Contractor's phone number. For Bin Customers, or Cart Customers with off-site management such as small apartment buildings, Contractor shall also mail a copy of the warning to the Customer's Billing address. Contractor shall maintain a log of all warning notices issued pursuant to this section for a year, including date and location of occurrence, and shall provide the log to the Public Works Director upon request. With prior written City authorization, Contractor may remove the Recycling or Green Waste Containers from habitual contaminators that have received a total of three warnings on the Container in any three-month period due to contaminated loads. Residential Recycling and Green Waste Containers will be returned only after six months, or upon direction of the City, or if there is a change of occupancy. Commercial Containers will be returned upon direction of the City, or if there is a change of occupancy.

6.15 Litter Abatement

6.15.1 Minimization of Spills

Contractor shall use due care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the Collection or transportation process. If any Solid Waste or fluids leak or spill during Collection, Contractor shall promptly clean up all such materials. Each Collection Vehicle shall carry a broom, shovel, absorbent, and containment materials at all times for this purpose.

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste transfer between vehicles, without prior written approval by City.

6.15.2 Clean Up

During the Collection or transportation process, Contractor shall clean up all litter spilled during Collection or otherwise caused by Contractor. Contractor shall leave a "red tag" notice for Customer if litter not caused by Contractor is found in Container enclosure or around Containers. Section 5.4.5 provides remedies to Contractor for addressing habitual offenders and charging Customers for the cleaning of Container enclosures or around the Container if it is littered due to overflowing Containers.

In the event of a spill of materials (vehicle fluids, Green Waste, leachate, etc.), Contractor shall provide a cleanup of the spill to the satisfaction of City and other Government Bodies. Cleanup methods may include pressure washing (Contractor must capture and reclaim water) or other similar clean-up methods.

6.15.3 Covering of Loads.

Contractor shall properly cover all open Container during transport to the Disposal Site.

6.16 Personnel

A. Qualified Drivers. Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall furnish drivers that have a basic comprehension of the spoken English language.

B. Hazardous Waste Employee Training. Contractor shall establish and vigorously enforce an educational program which will train Contractor's employees in the identification of Hazardous Waste. Contractor's employees shall not knowingly place such Hazardous Waste in the Collection Vehicles, nor knowingly dispose of such Hazardous Wastes at the processing Facility or Disposal Site.

C. Customer Courtesy. Contractor shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If City has notified Contractor of a complaint related to discourteous or improper behavior, Contractor will consider reassigning the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process.

D. Unauthorized Material Removal. Contractor shall dismiss or discipline employees who remove documents or any other material from Containers, other than specifically for the purposes of Disposal and Diversion as described in this Agreement.

E. Training. Contractor shall provide suitable operations, health and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations. Contractor will train drivers to recognize and report unusual or suspicious situations to assist local law enforcement.

F. Compliance with Immigration Laws. Contractor shall be knowledgeable of and comply with all Applicable Laws which may apply to the performance of this Agreement. Consultant warrants and represents that all of its employees, including any and all prospective employees hired to perform services for the City under this Agreement and the employees of any subcontractor retained by the Consultant to perform a portion of the services under this Agreement, are and will be authorized to perform the services contemplated by this Agreement in full compliance with all Applicable Laws, including, but not limited to, the Immigration Nationality Act of 1952 (commencing with Section 1101 of Title 8 of the United States Code), and the Immigration Nationality and the Immigration Reform and Control Act of 1986 (commencing with Section 1324a of Title 8 of the United States Code), as amended. Contractor agrees to verify the legal status of all of its employees and provide documentation of such verification whenever requested by the City. If Contractor discovers that any employee it has retained is not in compliance with Applicable Laws, Contractor agrees to terminate such employee. The Contractor shall keep all records indicating compliance required by the Federal Immigration and Control Act of 1986 and shall make such records available for inspection by the Public Works Director upon request

G. Employee Uniform. The Contractor shall take all steps necessary to ensure that its employees performing collection services conduct themselves in a workmanlike manner, and as quietly as possible. All such employees shall at all times of employment be dressed in clean uniforms with suitable identification. No employee may remove any portion of his or her uniform while working. The style and appearance of employee uniforms shall be subject to the approval of the Public Works Director.

H. Additional Staffing. Should the Contractor or City determine that additional staffing is required to service Agreement than Contractor anticipated in its proposal, due to additional routes, high customer service demand or otherwise, Contractor shall provide additional staff at no additional charge.

I. Consideration of Former Hauler's Drivers. Contractor shall conduct a job fair for, and accept applications from, employees of the City's former solid waste service provider, Consolidated Disposal Service, that provide services within the City; Company shall grant interviews to, and consider for hire, all qualified employees.

6.17 Identification Required

Contractor shall provide its employees, companies and subcontractors with identification for all individuals who may make personal contact with residents or businesses in City. City may

require Contractor to notify Customers yearly of the form of said identification. Contractor shall provide a list of current employees, companies, and subcontractors to City upon request.

City reserves the right to perform a security and identification check through the City's Police Department on the Contractor and all their present and future employees employed by Contractor to work in the City, in accordance with accepted procedures established by City, or for probable cause.

6.18 Fees and Gratuities

The Contractor shall not, nor shall it permit any agent, employee or subcontractor employed by it, to request, solicit, demand or accept, either directly or indirectly, any compensation or gratuity for the collection for City Solid Waste or other Solid Waste Handling Services, except such compensation as is specifically provided for herein.

ARTICLE VII

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

7.1 General

Contractor shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulations and to meet the reporting and Solid Waste program management needs of City. To this extent, such requirements set out in this and other Articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of City, the records and reports to be maintained and provided by Contractor in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

Contractor shall maintain all records necessary to allow the City to determine Contractor's compliance with the terms of this Agreement and compliance with the performance standards presented in this Agreement. The records shall be maintained in a manner that allows for easy verification of Contractor's performance.

7.2 Records

7.2.1 General

Contractor shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. All records shall be maintained for seven (7) years, and shall continue to be available for seven (7) years after the expiration of this Agreement. After minimum holding periods are met, Contractor will notify City 90 days before destroying records.

Contractor agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to City and its official representatives during normal business hours. Account histories shall be accessible to the City by computer

for a minimum of seven (7) years. City may review or utilize any of the records described in this section. Such records include, but are not limited to, financial, Solid Waste, CERCLA and Disposal records.

7.2.2 Financial Records

Contractor shall maintain financial records relating to its operations pursuant to this Agreement separate and segregated from such records relating to its other operations.

Contractor shall maintain at least the following records:

- Audited financial statements for Contractor or, if a guarantee was provided, for the parent company guarantor as a whole;
- Financial statements of revenue and expense for this Agreement segregated from the other operations of Contractor (including without limitation those operations of Contractor in City and surrounding jurisdictions which are not covered by this Agreement), including a description of segregation methodology (Contractor shall provide these financial statements upon City request pursuant to Appendix B, Section B.5 or Section 7.3.4);
- Complete annual financial statements of Contractor's publicly traded Parent company, to be provided to the City Manager and Public Works Director not later than 120 days after the close of Contractor's fiscal year [IF APPLICABLE]; and,
- Complete descriptions of related party transactions (corporate and/or regional management fees, inter-company transactions regarding transfer, processing or Disposal operations).

7.2.3 Solid Waste Records

Contractor shall maintain and make available to the City upon request the following records relating to its operations pursuant to this Agreement:

- a) Customer services and Billing/City payment records;
- b) Records of tons Collected, processed, diverted and disposed by waste stream (Refuse, Recycling, Green Waste), by Customer type (Cart, Residential Bin, Commercial, City Roll-Off Box), and the Facilities (Transfer Station, MRF, or landfill) where such material was taken (Residential Bin verses Commercial Bin tonnage may be estimated based upon Container distribution or other method approved by City);

- c) Weight tickets from the Disposal/processing Facility with route number, truck number, by day and date;
- d) Quantity of Recyclable Materials recovered by material type, as well as quantity of material diverted from landfills in compliance with AB 939;
- e) Bulky Waste pickup results and Special Event tonnages, including tons disposed and diverted;
- f) Routes;
- g) Facilities, equipment and personnel used;
- h) Facilities and equipment operations, maintenance and repair;
- i) Number and type of Refuse, Recycling and Green Waste Containers in service;
- j) Complaints; and,
- k) Missed pickups.

7.2.4 CERCLA Defense Records

City views the ability to defend against actions arising under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and related litigation as a matter of great importance. For this reason, City regards the ability to prove where Solid Waste Collected in Redondo Beach was taken for Disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where Solid Waste Collected under this Agreement was landfilled (and therefore establish where it was not landfilled), as well as where Recyclable Materials and Green Waste Collected were taken for processing and where any residual Refuse was taken for Disposal, for not less than seven (7) years following the termination of this Agreement, and agrees to notify City's Risk Manager and City Attorney at least ninety (90) days before destroying such records thereafter. At any time, including after the expiration of the Term hereof, Contractor shall provide copies of such records to City within fifteen (15) days of City's request for such records. Records shall be in chronological and organized form and readily and easily interpreted. The requirements of this section shall survive the expiration of the Term.

7.2.5 Other Programs' Records

Records for other programs shall be tailored to specific needs. In general, they shall include:

- a) Plans, tasks, and milestones; and,
- b) Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

7.2.6 Audit

City may conduct an audit of Contractor at any time. The scope of the audit, and auditing party, will be determined by City and the scope may include, but is not limited to, compliance with terms of this Agreement, Customer service levels and Billing, fee payments, Gross Receipts, tonnage, and verification of Diversion rate.

Contractor shall fund biennial audits. The first Contractor-funded audit, to be performed following the first Agreement Year, will be based on the Contractor's reports and records for the Agreement Year ending June 30, 2012. Contractor-funded audits will be performed every other year thereafter (the biennial audit). Contractor will reimburse to the City the cost of such audits (including audits conducted by City staff) up to \$80,000 for the first audit, and \$50,000 for each subsequent biennial audit, adjusted for inflation as described herein. The \$50,000 amount shall be increased annually, using the average annual CPI Less Food and Energy calendar year 2011 as a starting point. The \$50,000 shall increase for the fiscal year starting July 1, 2013 by the percentage change in the average annual CPI Less Food and Energy for calendar year 2012 versus the annual average for calendar year 2011; for the fiscal year starting July 1, 2014, this adjusted figure will increase again by the percentage change in the average annual CPI Less Food and Energy for calendar year 2013 over the average annual index for calendar year 2012.

Should an audit conducted or authorized by the City disclose that fees payable by Contractor were underpaid by three percent (3%) or more, that tonnage was mis-reported by three percent (3%) or more, or that three percent (3%) or more of the Customers were inaccurately billed based on the auditor's sampling, for the period under review, City may expand the scope of the audit and recover additional audit costs from the Contractor.

7.2.7 Payments and Refunds

Should an audit disclose that fees payable by the Contractor were underpaid or that Customers were overcharged for the period under review, Contractor shall pay to City any underpayment of fees and/or refund to Contractor's Customers or to City, as directed by City, any overcharges within thirty (30) days following the date of the audit. Contractor shall pay interest to the City for any underpayment or overcharges at an annual rate of twelve percent (12%). Undercharges shall not be billed in arrears for more than ninety (90) days of service,

with any remaining undercharges absorbed by Contractor. Should an audit disclose that fees were overpaid, City shall credit such amounts against future fees payable by Contractor.

7.3 Reports

7.3.1 Report Formats and Schedule

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- a) Determine and set rates and evaluate the financial efficacy of operations;
- b) Evaluate past and expected progress towards achieving the Act goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by City and City may instruct Contractor to restructure reports. In addition to submitting all reports on paper, Contractor agrees to submit all reports in an electronic format approved by City, compatible with City's software/computers at no additional charge.

Reports shall be submitted within thirty (30) calendar days after the end of the reporting period. Annual reports for which a date is not otherwise specified in this Agreement shall be submitted within thirty (30) calendar days after the end of the calendar year. If requested, Contractor's complaint log, maintained per Section 10.3.1 shall be sent to the Public Works Director within five (5) business days of request.

All reports shall be submitted to:

Public Works Director (or designated representative)
City of Redondo Beach
531 N. Gertruda Ave.
Redondo Beach, CA 90277

7.3.2 Monthly Reports

The information listed below shall be the minimum reported:

- a) Solid Waste Collected by Contractor, sorted by type of Solid Waste Collected and diverted (Refuse, Recycling, Green Waste) in tons (including contamination and Diversion rates for each wastestream and Customer type), Customer type (Cart, Residential Bin, Commercial Bin, City Roll-Off Box) and the Facilities where the tons were processed or disposed.
- b) Recycling and Green Waste participation rates, based upon set-out rate frequency.
- c) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- d) Complaint log, maintained per Section 10.3.1, and narrative summary of problems encountered and actions taken with recommendations for City, as appropriate.
- e) Quantity of Recyclable Materials recovered by material type, as well as quantity of material diverted from landfills in compliance with AB 939;
- f) Description of Contractor outreach activities and copies of promotional and public education materials sent during the month.
- g) Other information or reports that City may reasonably request or require.

7.3.3 Annual Report

The Annual Report is to be essentially in the form and content of the monthly report, but shall also include:

- a) A summary of the number of Containers in service as of December 31 by size (number of gallons, number of yards), sector (Residential Cart, Commercial Cart, Residential Bin, Commercial Bin and City Roll-Off Box), service frequency, and type of service (Refuse, Recycling, Green Waste).
- b) Records of tons Collected, processed, diverted and disposed by waste stream (Refuse, Recycling, Green Waste), by Customer type (Cart, Residential Bin, Commercial Bin and City Roll-Off Box), and the Facilities (Transfer Station, MRF, or landfill) where such material was taken;
- c) Gross Receipts by sector (Cart, Residential Bin, Commercial Bin, City Roll-Off Box).
- d) A complete inventory of vehicles used to provide all services, including make, year, type, fuel used, VIN number, use, California license number and whether or not it is used as a spare.

- e) Report of recycled materials sold by material type, tonnage and sector (Residential Cart, Commercial).
- f) Number of routes and route hours per day by type of service as of December 31.
- g) General information about the Contractor and its most recent annual report.
- h) Other information or reports that County may reasonably request or require.

7.3.4 Financial Report

The City may, at City's option, request and be provided with Contractor's financial reports/statements for the most recently completed fiscal year in connection with any audit, extraordinary rate adjustment request, or verification of other information required under this Agreement.

Financial statements shall include a supplemental combining schedule showing Contractor's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement, separated from others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The cost for preparation of the financial statements and audit shall be borne by Contractor as a direct cost of service. In addition, Contractor shall provide to City the supplemental schedule on a compiled basis.

7.4 Reporting Adverse Information

Contractor shall provide City two copies (one to the Public Works Director, one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating in any way to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, the California Integrated Waste Management Board, the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court. Copies shall be submitted to City within thirty (30) days of receipt by Contractor, or sooner if reasonably apparent that to do so is materially relevant, and any responses by Contractor shall be submitted to City simultaneously with Contractor's filing or submission of such matters with said agencies.

Contractor's routine correspondence to said agencies need not be routinely submitted to City, but shall be made available to City promptly upon City's written request.

7.5 Right to Inspect Records

City shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Contractor or its Affiliates that City shall deem, in its sole discretion, necessary to evaluate annual reports, and Contractor's performance provided for in this Agreement. Contractor shall make all records and documents to be reviewed and inspected by City as a part of any audit or other record review conducted by City, available for City's review, inspection and copying within five (5) days of receiving written notice from City requesting the same.

7.6 Failure to Report

(A) The refusal or failure of Contractor to file any required reports, or to provide required information to City, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a material breach of the Agreement as described in Section 13.3 and shall subject Contractor to all remedies which are available to the City under Agreement or otherwise.

(B) Without limiting any of the rights of the City hereunder, failure by the Contractor to provide the financial statement(s) or monthly quarterly or annual reports required under the terms of the Agreement or any other information required by the City, will allow the City to employ an independent certified public accounting or financial consulting firm, or other qualified consultant, to prepare such statements or reports, and the Contractor in such case shall be liable for and shall pay the costs and expense.

(C) To maintain confidentiality of the Contractor's financial, accounting and operational records, any audits or inspections of such records pursuant to this Section shall be done through an independent third party (to be selected by the City) which reports to the City. The Contractor shall cooperate with such third party with respect to any such audit for any purpose relevant to the Agreement.

ARTICLE VIII

FACILITIES

8.1 Facilities

Subject to the provisions of this Article VIII, the Contractor shall transport all City Solid Waste collected pursuant to this Agreement to a legally permitted Disposal Site for processing or disposal.

8.2 Transportation of Solid Waste to Facilities

Contractor shall transport all Solid Waste Collected to a City-approved Facility (e.g. Transfer Station, Waste-to-Energy Facility, Green Waste Processing Facility, MRF, Disposal Site).

Contractor shall maintain accurate records of the quantities of Solid Waste transported to all Facilities utilized and will cooperate with City in any audits or investigations of such quantities.

Contractor shall cooperate with the operator of any Facility it uses with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, cooperating with its Hazardous Waste exclusion program, and so forth. Contractor will assist the City in obtaining invoice and tonnage data from the Facility as City may request for audits.

8.3 Facility Selection

The Contractor may use a pre-existing facility or shall establish a site for its facility and any ancillary facilities to provide the services pursuant to this Agreement including: storage, transfer, landfill capacity for process residue and locations for sale or disposition of recycled materials if applicable.

Establishment of the site may include purchasing, leasing, sub-contracting, or other arrangements with a new or existing facility. Ownership or leasing shall be the responsibility of the Contractor. The Contractor will ensure that any applicable purchase or lease agreements with property owners and the local land-use authorities are implemented. The Contractor will have the responsibility to assure the technical and environmental suitability of any site for its intended purpose.

If the new processing facility or expansion of existing facility is determined to be a solid waste facility or transfer station as set forth in Chapter 1, under the California Integrated Waste Management Act, Public Resources Code Section 40000 et seq., the Contractor shall obtain and operate the facility in compliance with a Solid Waste Facilities Permit, Transfer and Processing Station Permit, Composting Facilities Permit, and/or any other applicable permits and laws. An application to secure any of these permits must be submitted at least 120 days in advance of operation.

No involvement of the City during the siting process shall relieve the Contractor of its responsibility with respect to facility siting.

8.4 Approved Facilities

The Contractor shall dispose of Refuse Collected, that is not required to be processed, and residue after processing at Contractor-owned Facilities, at the approved Disposal Site. Contractor must receive written advance approval from City to use each Transfer Station, Transformation Facility, processing Facility, Materials Recovery Facility, or other Facility used by Contractor in the fulfillment of this Agreement. Contractor is responsible for ensuring that each Facility it uses is properly permitted prior to requesting City approval to use such Facility. Unless and until the City instructs otherwise, the designated Disposal Site and other Facilities are: The Athens Services Transfer Station and MRF, Chiquita Canyon Landfill, Sunshine Canyon Landfill, El Sobrante Landfill, Puente Hills Landfill, Commerce Refuse-to-Energy Facility, American Waste Transfer Station, Allan Company, and California Waste Systems.

8.5 Status of Disposal Site

Any Disposal Site utilized by Contractor, shall be designed and constructed in accordance with 23 California Code of Regulations Section 2510 et seq. ("Subchapter 15"). Any such landfill shall have been issued all permits from federal, state, regional, county and City agencies necessary for it to operate as a Class III Sanitary Landfill and is in full regulatory compliance with all applicable permits and laws.

8.6 Facility Capacity Guarantee

Contractor guarantees Disposal capacity for 27,000 tons per year Collected under this Agreement, for the eight-year term of this Agreement, at the Chiquita Canyon Landfill. Contractor represents that this guarantee is available through an Agreement Contractor holds with Chiquita Canyon Landfill, and will continue to contract for such Disposal capacity at Chiquita Canyon Landfill for the term of this Agreement. With City approval that shall not be

unreasonably withheld, Contractor may replace the guarantee at this landfill with a guarantee at another landfill approved under Section 8.4 above.

8.7 Facility Permitting

All Facilities shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations.

The Contractor shall be solely responsible for determining which federal, state, and local laws, statutes, ordinances, permits, rules, and regulations apply to this Agreement and shall bear the cost of obtaining and complying with all requirements thereof.

8.8 Weighing of Materials

Processing facilities shall be capable of weighing all incoming material and all outgoing material, regardless of whether the outgoing material is marketable, reusable or residue.

The Contractor must develop a system to ensure that outgoing Recyclable Materials are accurately tracked by material type to enable the City to verify that material diverted from the solid waste stream were in fact recycled and not simply added to the waste stream at later or different point. The Contractor must either 1) keep material collected under this Contract separate and weigh each material separately by material type or, 2) provide a verifiable system, sufficient to meet the requirements of the Department of Resources, Recycling and Recovery, for determining the amount of each material type. The Contractor will be responsible for ensuring that the scales are Weigh Master certified and maintained regularly.

The Contractor shall be responsible for the lawful disposal of all residue resulting from the collection and/or processing of Recyclable Materials. Any residue produced by a processing Facility should be stored in accordance with applicable regulations.

8.9 Processes for Material Types

The processing system shall be capable of processing the collected Recyclable Materials to a degree necessary to be marketable at fair market value to insure they are diverted from the waste stream. The processing system should be designed and operated in a manner to maximize recovery of recyclables and minimize generation of non-recyclable residue.

8.10 City Option to Direct Solid Waste

At its discretion, the City shall have the option during the Term hereof to designate the Designated Disposal Site, or multiple concurrent Designated Disposal Sites, in its sole and

absolute discretion; provided, however, the City shall notify the Contractor in writing in the event that it wishes to exercise its rights to designate a disposal location and shall consult with the Contractor as to the reasonableness of using such facility. In the event that the City designates a Designated Disposal Site, the Contractor shall dispose of all City Solid Waste which it collects or generates by processing at the Designated Disposal Site in accordance with the requirements of Applicable Law, and shall comply with the requirements, rules and regulations of the owner or operator of the Designated Disposal Site. Contractor shall be entitled to a rate adjustment equal to the change in cost of using the alternative facility, considering both gate fee and drive time.

8.11 Payment of Disposal/Processing Fees

The Contractor shall pay, or make arrangements for the payment of, all tipping fees and other disposal or processing charges imposed by the owner or operator of the Disposal Site to be used by the Contractor for the disposal of City Solid Waste or, if applicable, the Designated Disposal Site. The Contractor acknowledges that disposal or processing costs required to be incurred by the Contractor were taken into account in the determination of the rates established in this Agreement, and the Contractor shall not be entitled to any additional compensation from the City or from Service Recipients because of variations in disposal or processing costs. If the Contractor is unable to accept and/or process City's materials at the Contractor's facility, the Contractor shall pay to the City any costs incurred by the City to implement alternative processing of materials collected, including landfilling if the City in its sole discretion determines landfilling is the most acceptable alternative. In addition, the City will reduce the Contractor's compensation for each day the Contractor cannot process the recyclable materials.

8.12 City Option to Designate Facility

The City may, at its option, designate a facility for processing Recyclable Materials provided, however, the City shall notify Contractor in writing in the event that it wishes to exercise its right to designate a processing, disposal or other facility and shall consult with the Contractor as to the reasonableness of using such facility. In such event, the Contractor agrees that it shall not utilize a different processing facility without the prior written approval of the City. In the event such designation by the City results in increased costs to the Contractor, the City and Contractor will negotiate an adjustment to Contractor's compensation in order to compensate Contractor for such cost increases based upon gate fee and distance, which may be an increase or decrease in cost.

8.13 Processing, Marketing and Sale of Recyclable Materials

The Contractor shall be responsible for the processing, marketing and sale of all Recyclable Materials collected pursuant to this Agreement at an approved Facility per Section 8.4. Contractor may retain revenue from the sale of Recyclable Materials, and shall report the amount of such revenues to City upon request.

ARTICLE IX
OPERATING ASSETS - EQUIPMENT

9.1 Vehicles

9.1.1 General

Contractor is responsible for providing all vehicles that may be required for the Collection of Solid Waste, including Refuse, Recycling, Green Waste, and for ancillary services, that are sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms, and at a minimum as described in Contractor's Proposal. Contractor is expressly obligated to provide such Collection Vehicles and routes as are required to meet the service standards set forth herein, even if such Collection Vehicles and routes exceed those set forth in Contractor's Proposal. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies. The City may specify a minimum level of backup equipment required.

9.1.2 Specifications

All route vehicles, including spares, shall use exclusively either liquefied natural gas (LNG) or compressed natural gas (CNG) and shall be model year 2010 or newer. Such vehicles must be registered with the California Department of Motor Vehicles and shall have water-tight bodies designed to prevent leakage, spillage or overflow. At all times during the term of this Agreement, Contractor's Collection vehicles shall comply with South Coast Air Quality Management District Requirements and the California Air Resource Board requirements as they are currently in force and as they may be approved for Solid Waste removal vehicles, as well as other Federal, State and local laws and regulations that may be enacted during the term of this Agreement. Ancillary vehicles such as Roll-Off Box vehicles, container delivery and scout vehicles need not meet the thirteen year age limit or LNG/CNG fuel requirement, provided that they otherwise meet all Legal Requirements and other Agreement requirements.

9.1.3 Vehicle Signage, Identification and Labeling

9.1.3.1 Identification and Labeling

Each Collection vehicle shall be marked with Contractor's name, toll free phone number, and a vehicle/equipment identification number visibly displayed on each side of its vehicles or other Collection equipment used by the Contractor. City must approve truck labeling.

9.1.3.2 Vehicle Hotline Number

Vehicles will carry a telephone number easily read by pedestrians and other vehicles, whereby people witnessing leakage from the vehicle may readily report it to the Contractor. Contractor shall document and address these calls in accordance with Section 10.3.1, whereby the calls are logged and immediately addressed, with the records, including the resolution, are readily available to the City.

9.1.3.3 Vehicle Public Education Panels

The Contractor shall permit the City to install frames and panels on the side of the Contractor's vehicles for public education purposes. The frames and panels and installation of these items will be provided by the City. All frames and panels are the property of the City and will remain the property of the City at the end of the term of this Agreement. The Contractor will work with the City in order to install frames and panels in a timely fashion. It will be the Contractor's responsibility to notify the City when a vehicle, which has a City public education panel, will no longer be operating in the City of Redondo Beach.

9.1.3.4 City Approval of Vehicle Markings

No other signs or markings other than as described in this Section 9.1.3 shall be placed on the Contractor's vehicles or other collection equipment without the prior approval of the Public Works Director except signs or markings relative to use of such equipment including traffic safety signs.

9.1.4 Cleaning and Maintenance

- 1) Contractor shall maintain all properties, vehicles, facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.
- 2) Collection Vehicles shall be uniformly painted, thoroughly washed, and thoroughly steam cleaned on a regular basis, at least once per week, so as to present a clean appearance. City

may inspect vehicles at any time to determine compliance with this Agreement. Contractor shall also make all Collection Vehicles available to the County of Los Angeles for inspection regarding health concerns and requirements, at any frequency it requests. Contractor agrees to replace or repair to the City's satisfaction, any Collection Vehicle which City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

- 3) Contractor shall repaint any or all Collection Vehicles within thirty (30) days' notice from City, if City determines that their appearance warrants painting. City may not require a vehicle to be repainted if it has been repainted within the previous thirty (36) months. Vehicles carrying graffiti will be replaced by spares until graffiti is removed; no vehicles carrying graffiti will be permitted to be used in the City.
- 4) Contractor shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions upon Collection Vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all Collection Vehicle maintenance, recorded according to date and shall make such records available to City upon request.
- 5) Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date, nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- 6) Contractor shall clean up any leaks or spills of any kind from its vehicles, at Contractor's expense, per the National Pollutant Discharge Elimination System (NPDES) permit in effect at the time. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such clean-up efforts, and a broom and shovel.
- 7) Upon request, Contractor shall furnish City a written inventory of all equipment, including Collection Vehicles, used in providing service pursuant to this Agreement. This inventory shall list all equipment by manufacturer, year of production, ID number, date of acquisition, type, capacity, and whether the vehicle is a spare.

9.1.5 Operation

Vehicles shall be registered with and operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

Contractor's equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and such noise control features shall be incorporated throughout the entirety of all Collection Vehicle. Noise levels of equipment used for Collection shall comply with City ordinance and in no event shall the noise level exceed 75 dba when measured at a distance of 25 feet from the vehicle, five feet from the ground. Contractor shall submit to City, upon City's request, a certificate of vehicle noise level testing by an independent testing entity approved by the City. Each vehicle used for the collection, hauling and disposal services identified In this Agreement shall be equipped with an audible warning device that is activated when the vehicle is backing up.

Contractor shall store all equipment in safe and secure locations in accordance with City's applicable zoning regulations.

Contractor shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: City's driving surfaces, whether or not paved, public or private; associated curbs, gutters and traffic control devices; and all other public and private improvements.

Vehicles shall be operated in a manner, with loads covered at all times except during loading and unloading, to prevent litter from escaping. Hoppers shall be completely enclosed on the top and all sides by effective screening material. When the vehicles are being used to collect materials, such enclosures shall be open on the top or one side only.

9.1.6 City Inspection Per Code

City may cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the provisions of the State Vehicle Code, including, but not limited to, California Vehicle Code Sections 27000(b), 23114, 23115, 42030, 42032, and all Vehicle Code Sections regarding smog equipment requirements. City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes or other standards under this Agreement. No vehicle

directed to be removed from service shall be returned to service until it conforms with, and its return to service has been approved by Public Works Director.

9.1.7 Vehicle Inspections

Contractor shall submit to the City the Safety Compliance Report/Terminal Record Update from its Biennial Inspection of Terminal, or BIT, within thirty (30) days of report becoming available. If Contractor receives a terminal rating below satisfactory, Contractor shall notify the City immediately, and Contractor is in violation of the Agreement. Contractor has the time allowed by the Department of California Highway Patrol ("CHP") to cure violations and bring the terminal rating up to satisfactory. If the CHP does not adjust the rating to satisfactory or better within six (6) months, then the Contractor shall be considered in default of the contract and the City may terminate the Agreement.

9.1.8 Correction of Defects

Following any inspection, the Public Works Director shall have the right to cause Contractor, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly. The Public Works Director's determination may be appealed to the City Council, whose decision shall be final.

9.2 Operating and Maintenance of Equipment

The Contractor at its cost and expense shall at all times operate, or cause to be operated, equipment used in performance of this Agreement, including all vehicles and Containers, properly and in a sound and economical manner; shall maintain, preserve, and keep the equipment or cause the equipment to be maintained, preserved and kept in good repair, working order and condition, shall staff operations with the appropriate number of hourly and salaried employees consistent with good management practice; and shall from time to time make, or cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the equipment may be properly and advantageously conducted. The Contractor shall maintain the safety of the equipment at a level consistent with Applicable Law, the Insurance Requirements, and prudent solid waste management practices. The Contractor shall maintain its vehicles and collection equipment free of graffiti. Equipment identified as having graffiti shall be maintained pursuant to this Article.

9.3 Containers

9.3.1 Ownership of Containers

Carts and Bins. Carts and Bins used in the City shall become property of the City, including all such Containers required to be provided by Contractor as replacement Containers and all new Refuse and Green Waste Carts to be distributed City-wide. Carts and Bins in distribution in the City and owned by the City at the start of service under this Agreement may continue to be used by Contractor to service Customers unless and until Cart or Bin is otherwise required to be removed from service under this Agreement.

Roll-Off Boxes. Roll-Off Boxes required for services at City Facilities shall be provided by, and remain the property of, Contractor. Provision of the compactor Roll-Off Box serviced at the pier and City public litter Containers is the responsibility of City.

9.3.2 Carts

A. Cart Design Requirements

When Contractor must provide or replace Carts under this Agreement, Carts must meet color, size, uniformity and quality requirements of the City. Carts must be compatible with standard Collection equipment. Carts should appear similar in color and style to Carts already in distribution in the City. City will not permit Carts and Cart lids with inconsistent colors or in poor condition to be used in the City at any time during the Term of this Agreement, and may require Contractor to replace such Carts.

All Carts provided by Contractor utilized in the performance of this Agreement shall be manufactured by injection or rotational molding, remain leakproof, and meet the Cart design and performance requirements as specified below. Carts provided by Contractor shall have a uniform thickness, at least as thick as the Carts in distribution prior to the start of this Agreement. All Carts selected shall be subject to City's approval.

All Carts placed in use by Contractor shall contain a minimum of 25% of recycled materials. All Carts removed from service by Contractor shall be Recycled.

B. Capacity

The references in Sections 5.4.2, 5.4.4, 5.5.2 and 5.6.2 to Cart sizes of 96, 64 and 32-gallons may be approximate. The Cart size, excluding lid capacity, may fall within the following range:

- 30 – 35 gallons

- 60 – 70 gallons
- 90 – 101 gallons

The selected sizes must be consistent throughout the City for a uniform appearance and shall be no wider than 29”.

C. Cart Color and Appearance

The Refuse, Recycling and Green Waste Carts will be differentiated by color, respectively gray, blue and green. All replacement Carts must match the color currently in distribution. Contractor may request to be permitted to use an alternative shade when it replaces Refuse and Green Waste Carts throughout the City; however, City is not obligated to approve any change. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be approved in advance by the City. Cart and Cart lid colors shall be consistent throughout the City.

D. Cart Labeling and Hot Stamping

Labels and hot stamps shall be on the top of the lid, inside of lid and/or on the body of the Cart as instructed by City. Design for both the labels and the hot stamps must be approved by City prior to ordering labels or Carts. City shall approve what information is included on the label and in the hot stamp, as well as approve design and quality. Labels shall be replaced when worn, and when information on the label is in need of updating. Cart labels and hot stamps will include written and graphic instruction on what materials should and should not be placed in each Cart. Information on the Carts shall include the telephone number to call for Contractor, Bulky Waste pickups and HHW disposal information.

Refuse Carts shall be hot stamped: Trash Only; Property of the City of Redondo Beach; No hot ashes; and a white space shall be made available for the Service Recipient to write their address.

9.3.3 Cart Maintenance and Replacement Responsibilities

Contractor shall be responsible for Cart graffiti removal and Cart repair and maintenance, and replacing lost or stolen Carts, or Carts too damaged to adequately store Solid Waste within two (2) business days, and replacing less-severely damaged Carts within five (5) days, at no additional charge to the Customer or to City, unless Contractor can demonstrate to the Public Works Director beyond a reasonable doubt that the damage or loss was due exclusively the Customer’s intentional or negligent behavior. Public Works Director shall make the final determination. If City permits a repair or replacement charge to be assessed against a

Customer, charge shall be no more than the actual cost of repair or the Contractor's purchase price for a new Cart, whichever is lower. All repairs must restore the Cart to its full functionality. Unsightly/worn-out Carts shall be replaced by Contractor upon Customer request. Customer or City may request to have Contractor exchange Cart sizes or deliver additional Carts at no additional charge; Contractor shall exchange or deliver Carts within five (5) business days of request.

9.3.4 Bin Specifications

Contractor shall supply new or replacement Bins to Customers when appropriate to provide service and meet Bin requirements under this Agreement. The size of Contractor-provided Bins shall be determined by mutual agreement of Customer and Contractor, and shall be subject to City approval. Bins shall be subject to the following requirements:

A. Locking Mechanism. All bins shall have the ability to be locked, as any Customer may request locking lid service.

B. Design, Cleaning and Maintenance. Contractor shall maintain Bins in a clean, sound condition free from putrescible residue. All Bins in use shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight (non-leaking) and well painted. Bins shall have wheel locks if necessary for safety, such as Bins stored or Collected at sloped locations. Wheels, forklift slots, and other apparatuses, which were designed for movement, loading, or unloading of the Bin shall be maintained in good repair. Bins shall be repaired or replaced within two business days of notification from City or Customer, or from Collecting a damaged Bin. Contractor may only request reimbursement of repair costs from Customer if repairs are due to Customer's abuse of the Bin and request is approved in advance in writing by City in its sole discretion.

Upon Customer or City request, or if required to maintain the Containers in a clean condition, Contractor shall clean all Bins once per year at no additional charge. Contractor shall perform cleaning or replacement of Bins more frequently if necessary to prevent a nuisance caused by odors or vector harborage, or if requested by Customer or City, for an additional fee in accordance with the Approved Rate Schedule. When a Bin is removed for cleaning, Contractor shall replace the Bin, either temporarily or as a change-out, with another Container.

Contractor shall remove graffiti from any Container within two business days of request by City or Customer, or of Collection from a Bin bearing graffiti. Contractor shall proactively look for graffiti when Collecting Bins.

C. Bin Identification and Color. Each Bin serviced by Contractor shall be labeled to include written and graphic instruction on what materials should and should not be placed in each Bin. Contractor shall repaint Bins upon City or Customer's request if the City or Customer deems it necessary to maintain a neat appearance. All Refuse Bins shall be painted a uniform color of blue, and all Recycling Bins shall be painted a different, uniform color of white. All Bins shall carry the City logo, anti-scavenging information, and "Property of Redondo Beach." Contractor must obtain advanced written City approval for language, lettering and logo to be placed on Bins.

D. Bin Leakage Hotline. Bins shall carry a number which observers may call to report leaking Bins. These calls shall be addressed and recorded in the same manner as a complaint call under Section 10.3.1.

9.3.5 Roll-off Boxes

Contractor shall provide sufficient Roll-off Boxes to meet City service demands throughout the Term of the Agreement, and will keep all Roll-off Boxes clean, free from graffiti and equipped with reflectors. Contractor shall properly cover all open Roll-Off Boxes during transport as required by the State Vehicle Code. The provision of Roll-Off Box services to Customers is not included under this Agreement; however, Roll-Off services are to be provided to the City for City facilities, projects and special events. City may request Contractor to replace Roll-Off Boxes (excluding compactor Roll-Off Box) currently in use due to the condition of these Containers.

9.3.6 Disposal of Containers

Contractor shall be responsible for the removal and disposal or recycling of all Bins and Carts used in the City that are replaced or otherwise removed from service under this Agreement, including Refuse and Green Waste Carts replaced under Sections 5.4.2 and 5.6.2. Contractor shall be responsible for all costs involved in Container removal and replacement, and shall be entitled to retain all salvage value from such Containers.

ARTICLE X

CUSTOMER SERVICE REQUIREMENTS

10.1 Project Management and Staffing

10.1.1 Project Manager

The City and the Contractor have each designated in writing a person to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to this Agreement (each a "Project Manager"). The City's Project Manager initially shall be the Public Works Director or such person designated by the City Manager. The City may designate a successor or substitute Project Manager at any time by written notice to the Contractor. The Contractor's Project Manager shall be Tommy Ouzoonian. The Contractor shall not change this designation without prior approval of the City, excluding cases of termination of the employee. City may request that Contractor change Project Manager, and shall have the right to approve the Project Manager. The Contractor's Project Manager shall meet with the City as necessary to effectuate the purposes of the Agreement.

10.1.2 Route Supervisor

Contractor shall designate in writing a route supervisor that shall be assigned exclusively to the City, and who shall be responsible for working with City's Project Manager to resolve Customer service related complaints. Route supervisor shall be accessible via cell phone or radio in the field at all times. City shall be notified in advance of any change in Route Supervisor and shall have the right of approval. City may request that Contractor change Route Supervisor.

10.1.3 Customer Service Representative for Transition

Contractor shall station a Customer service representative at the City's Public Works office for a three month period beginning one week prior to the roll-out of new services under this Agreement. City shall supply a desk and access to City telephone service. Customer service representative shall remain an employee of Contractor and Contractor shall provide such employee with access from the City's Public Works office to Contractor's Customer service system, and radio or mobile phone access to Contractor's Project Manager and Route Supervisor (see Sections 10.1.1 and 10.1.2).

10.1.4 Monthly Project Management Meetings

Contractor's Project Manager and other appropriate staff shall participate in monthly meetings at the City with the City's Project Manager and/or other City staff.

10.2 Public Access to Contractor

10.2.1 Office Facility

The Contractor shall establish and maintain at all times during the Term hereof a local office.

10.2.2 Office Hours

The Contractor's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. daily, except Saturdays, Sundays and holidays. Saturday hours shall be, at a minimum, from 8:00 a.m. to 12:00 noon.

10.2.3 Availability of Representatives

A representative of the Contractor shall be available at the Contractor's office during office hours for communication with the Public Works Director or the public. The Contractor's representative should have the capability of responding in English and other languages necessary to communicate with the Public Works Director and the public. The Contractor's office shall be accessible by a toll-free "800" phone number for Customer service. At the Contractor's expense, the telephone number shall be listed in the Redondo Beach White Pages telephone directory under the Contractor's name. Calls to Contractor shall be answered by a live operator and Contractor shall provide a 175 language translation service at no additional charge.

10.2.4 Emergency Telephone Number

The Contractor shall maintain an emergency telephone number for use during other than normal business hours. The Contractor shall have a representative, or an answering service to contact such representative, available at the emergency telephone number during all hours other than normal office hours. At the Contractor's expense, the emergency telephone number shall be listed in the Redondo Beach telephone directory under both the Contractor's name and the City's name. The Contractor shall be able to respond to inquiries in English, Telecommunications Device for the Deaf Service and other languages necessary for communication with the Public Works Director and the public.

10.3 Service Complaints

10.3.1 Complaints to Contractor

The Contractor shall maintain during office hours a complaint service and a telephone answering system capable of accepting at least four (4) incoming calls from Redondo Beach Service Recipients at one time.

Additionally, the Contractor shall maintain a webpage link from the City's Public Works webpage and have a link to the City's Public Works webpage on the Contractor's webpage. The Contractor's web page shall contain a form for residents to file complaints, access information on collection services in the City, and provide additional information that the City may develop in the future.

Copies of all complaints shall be given to the Public Works Director upon request. The Contractor shall record all complaints, including date, time, complainant's name and address if the complainant is willing to give this information, and nature and date and manner of resolution of complaint, in a computerized daily log from both calls and e-mails which shall be submitted daily by 9:00 a.m. Any such calls received via the Contractor's answering service or e-mails after office hours shall be recorded in the log the following working day.

This log shall be available for inspection, be accessible and be in a format approved by the City. The Contractor shall provide a copy of this log to the City with the monthly report. All Redondo Beach Customer incoming calls shall be answered within a maximum of five (5) rings. Any Redondo Beach Customer call on hold in excess of 1.5 minutes shall be switched to a message center where information will be maintained in a daily log to enable a Customer service representative to return Customer calls.

The Contractor shall use reasonable best efforts to attempt "call backs" within one hour from the time of receipt of the initial call; provided, however, that in all circumstances "call backs" shall be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. If the caller is not contacted on the first attempt, the Contractor shall make subsequent attempts on the next working day after the original call. A minimum of three (3) attempts are to be made within twenty-four (24) hours. If the Contractor is unable to reach the caller on the next working day, the Contractor shall send a postcard to the caller on the second working day after the call was received, indicating that the Contractor has attempted to return the call. All attempts to contact the caller shall be recorded on the log kept by the Contractor.

All Customer support services shall be available in English and other languages as necessary to communicate with callers. All complaints and requests should be recorded in the computer

record as soon as they are received. Responses to complaints and service requests must be recorded in the computer record within 24 hours after resolution of the complaint or completion of the service request.

Complaints and requests received by the City will be recorded by the City on a Service Call Form. The Service Call Form will include the time the complaint or request was received by the City. The Contractor will pick up these forms from City Hall by 2 p.m. each business day. The Contractor may pick up Service Call Forms from the City more than once a day. However, it is mandatory the Contractor pick up these forms once each business day by 2 p.m. The Contractor will be responsible for recording all the information on each Service Call Form received from the City into the Contractor's computer system.

10.3.2 Required Response to Complaints

The Contractor, within twenty-four (24) hours of its receipt of notice from an Owner or the City of a failure to provide City Solid Waste collection service as required by the terms of this Agreement shall collect such City Solid Waste, provided such Solid Waste is in Containers and has been placed in permitted collection locations.

10.4 Liquidated Damages

A. General. City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of certain specific obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results 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, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that the services that are the subject of this Agreement might be available at substantially lower costs than alternative services and 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 specific breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties further acknowledge that consistent, reliable Solid Waste Handling Service is of utmost importance to City and that City has considered and relied on Contractor's

representations as to its quality of service commitment in entering this Agreement with it. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such breaches as an event of default under Article XIII, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Contractor: Initial Here_____

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

- (1) For each failure to correct and collect a missed service within twenty-four (24) hours of notice of the missed service:
\$100.00 per occurrence; each additional twenty-four (24) hour period: \$50.00 per occurrence.
- (2) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$100.00
- (3) For each failure to commence service to a new Customer account, including either failing to deliver or failure to service a Container, within seven (7) days after order: \$100.00
- (4) For each occurrence of excessive noise or discourteous behavior by Contractor or Contractor employee which exceeds three (3) per month: \$100.00
- (5) For each failure to record a response to a Customer complaint or request within twenty-four (24) hours of resolution: \$100.00 per occurrence;
For each additional twenty-four (24) hour period: \$50.00 per occurrence.

- (6) For each instance or invoice in which Contractor imposes a special service fee not in accordance with the Approved Rate Schedule and not approved in advance in writing by City, or not requested by the Service Recipient: \$1,000 per occurrence.
 - (7) For each failure to clean up spillage or litter (including leakage from vehicles) within 90 minutes of report: \$200.00 per occurrence.
 - (8) For each failure to process a damage claim by a Service Recipient or the City within thirty (30) days: \$100.00 per occurrence.
 - (9) For each failure to remit City fees by the fifteenth of the month following the reporting month: \$100.00 per day per occurrence.
 - (10) Failure to provide a Customer with a response, including an explanation and/or correction, to a billing complaint within seven (7) working days from the complaint: \$100.00 per occurrence;
Each additional day response not provided: \$50.00.
 - (11) For each failure to deliver, repair, replace, clean, remove graffiti from, or change size of containers/bins within the period required under Section 9.3.3: \$50.00 per occurrence;
Each additional day problem not resolved: \$25.00 per occurrence.
 - (12) For each month in which Contractor receives more than twenty-five (25) complaints in one month: \$500.00.
- For purposes of this section, "complaints" shall mean Service Recipient notifications to the Contractor or City of missed pick-ups, property damage, missed commitments, employee misconduct, poor quality of service (e.g. litter on property or public right-of-way, misplacement of bins).
- (13) For each instance in which Contractor operates during hours not authorized by the City: \$250.00 per occurrence.
 - (14) For each failure to tag materials or a Container not collected: \$50.00 per occurrence.
 - (15) For each piece of equipment not maintained to City standards: \$100.00 per occurrence.
 - (16) Failure to report to the City by 2 p.m. to collect complaints of service requests: \$50.00 per occurrence.
 - (17) Failure to maintain records required by Agreement: \$1,000.00 per occurrence.

- (18) Failure to designate Route Supervisor exclusively to Redondo Beach: \$200 per day
- (19) For each occurrence of Collecting Green Waste or Recycling Container Collected as Refuse without issuing a red tag: \$100.00/Container
- (20) For each day Roll-Off Compactor located at the Pier is Collected but not returned steam cleaned: \$150.00 per day
- (21) For each day Contractor is late in meeting a requirement identified and scheduled in accordance with the Public Education Plan developed and updated under Section 10.5.2: \$50.00 per day
- (22) For each calendar year (July 1, 2011 to December 31, 2012 considered the first calendar year) in which Contractor fails to provide support to the City within thirty (30) days of year-end, documenting that it diverted at least 59% of the Solid Waste Contractor Collected under this Agreement per Section 5.5.6:
\$25 for each ton below tonnage level necessary to meet 59% Diversion goal
- (23) For each ton short of the minimum number of tons Contractor is required per Section 5.5.5 to send to a Waste-to-Energy Facility and provided Diversion credit to the City (this may be collected in addition to other damages permitted under this Agreement):
\$25 for each ton below tonnage level
- (24) Timeliness of Submissions to City

Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily liquidated damage amount shall be:

- i) Monthly Reports: \$50 per day
- ii) Annual Reports: \$100 per day

(25) Accuracy of Billing

Each Customer invoice that is not prepared in accordance with the City's Approved Rate Schedule, in excess of five (5) monthly:

\$50 per invoice, not to exceed \$2,500 per billing run

- (26) Cooperation with Service Provider Transition
- a) For each day routing information requested by City in accordance with Section 15.24 is received after City-established due dates, both for preparation of a request for proposals and for new service provider's implementation of service: \$1,000/day
 - b) For each day delivery of keys, access codes, remote controls, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new service provider servicing Customers with access issues, as described in Section 15.24: \$1,000/day
 - c) For delay in not meeting the requirements contained in Sections 6.5 and 15.24 in a timely manner, in addition to the daily liquidated damages for breach under 26(a) and 26(b) above, liquidated damages of: \$35,000
- (27) General Contract Adherence - For each day that Contractor fails to provide services required under the Agreement, or comply with terms of the Agreement, five (5) business days after receipt of written notification from City that such services are not being provided or terms are not being met: \$300.00/day
- (28) Failure to provide Emergency Response Plan within 30 days of City request: \$500.00 per occurrence; each additional day \$100.00.
- (29) Penalty increase when contractor has received a penalty for a particular service indicator more than 15 times: 25% of original penalty amount.
- (30) After fifteen (15) penalties in a category the penalty will increase after each five (5) additional penalties: 25% of previous penalty amount.
- (31) For each failure to place containers back where residents put them for collection; either on the sidewalk or on the street up against the curb: \$25 per container per day.
- (32) For each failure to return an emptied Roll-Off Box to the City yard for the Collection of street sweepings by 9:00 a.m. each Monday through Friday: \$250/occurrence
- (33) For each instance of staging Containers in City, other than on Contractor's premises, without prior written approval of City: \$250/occurrence

- (34) For each instance in which a missed pickup is inaccurately reported as corrected prior to actual pickup: \$100/occurrence

City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints. The Public Works Director shall give the Contractor written notice of charges levied pursuant to this Section.

The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense of) all information in the possession of City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with City. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Contractor with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

C. Amount. City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement. The City will have reasonable discretion to increase or decrease unsatisfactory service indicators and penalty amounts annually when the City conducts a Review of Services and Performance pursuant to Section 13.14.

D. Timing of Payment. Contractor shall pay any liquidated damages assessed by City within fifteen (15) days after they are assessed. If they are not paid within the fifteen (15) day period, City may proceed against the performance bond required by the Agreement or find Contractor in default and terminate this Agreement Section 13.3, or both.

10.5 Education and Public Awareness

10.5.1 General

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of AB 939. Accordingly, Contractor agrees to take direction from City to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse and Recycle Solid Waste and to cooperate fully with City in this regard.

Contractor shall maintain its own program of providing information relevant to needs and methods to reduce, reuse and recycle Solid Waste with its Bills. All public education materials shall be approved in advance by City.

10.5.2 Implementation and On-going Education Requirements

In order to promote public education, in addition to any other materials it develops, Contractor shall create the following public education materials and programs at its expense, which will be distributed as indicated below. All brochures, mailings, and other educational materials are to be approved by City in advance of distribution. All materials will be professionally printed on paper stock with minimum recycled content.

A Public Education Plan shall be submitted to City for review and approval within sixty (60) days of the execution of this Agreement, and an update shall be submitted to City for review and approval within sixty (60) days prior the start of each Agreement Year. The plan shall address the items described in this section, including the schedule for distribution of publications and mailings updated for each year. The plan shall include: 1) specific dates for submittal of public education pieces to the City for approval, 2) specific publication deadlines for quarterly and annual brochures/newsletters, 3) publication dates and content for newspaper ads and articles, if known, 4) estimated dates and planned content for newspaper ads and articles projected to be published (as these requirements may require flexibility to address event timing), and 5) all other Public Education plans for the upcoming Agreement Year shall be included and adhered to. Liquidated damages may be assessed in accordance with Section 10.4 for each failure to meet an approved date in the plan, or the failure to submit a complete and timely plan.

- **Service Transition Mailing** - No later than forty-five (45) days of the start of Collection service under this Agreement, Contractor will prepare and mail an initial mailing to all Customers explaining the transition from the existing Solid Waste Handling Service program to the new program as defined by this Agreement. The mailing will describe program changes, route changes if any, dates of program implementation, Recycling and other Diversion programs available, and other pertinent information.
- **Cart Size Selection Mailer** - Contractor shall prepare and mail a new services flyer to all residents in the City 90 to 120 days prior to the distribution of new Carts to determine the size and number of Carts desired. Containers will be delivered with a detailed packet of information regarding how to use the Carts.

- **Cart Transition Mailing** – No later than thirty (30) days prior to the distribution of new Refuse and Green Waste Carts City-wide, Contractor will prepare and mail an initial mailing to all Customers explaining the Cart exchange process and schedule.
- **Instructional “How-to” Packets** – An information packet shall be provided to each Customer at the start of service under this Agreement and to each new Customer throughout the Agreement term. This packet shall: describe available services, including available Recycling and Diversion programs; provide instructions for proper use of the Carts and Bins provided (such as how to place Carts or other permitted items for Collection, the types of materials to be placed in each Cart); detail holiday Collection schedules; and provide billing and Customer service telephone numbers. This packet will contain updated information on how to use Containers, when, where and how to place Solid Waste for Collection, and who to contact with service or Billing questions, and for Bulky Waste pickups.

The packet should also clearly indicate what materials, such as syringes and other Household Hazardous Wastes (HHW), should not be disposed of in these Containers. This brochure shall include instructions on how Customers should dispose of HHW, such as information on the HHW drop-off facilities and other available programs.

- **Container Labels and Hot Stamps** –Containers shall carry stickers/labels and hot stamps as described in Sections 9.3.2 and 9.3.4.
- **Annual Brochures/Mailings** – Not less than once per year during each Agreement Year, Contractor shall prepare and distribute to each Customer a mailing to update Customers regarding program basics, program changes, holiday schedules and other service related information. Separate brochures shall be developed for Residential and Commercial Customers, reflecting the different services provided to each group. Mailings should promote and describe in detail: all Solid Waste programs offered by City and Contractor (such as Recycling, Green Waste, Holiday Tree and Bulky Waste Collections); the environmental, regulatory, and other benefits of participating in Recycling; how to properly dispose of Household Hazardous Waste such as syringes, paint, etc. through the County’s program, the City’s door-to-door program, or other means; Collection schedules, including holiday schedules; Customers service numbers; and the procedures to begin and terminate services. This brochure shall be at least four (4) pages, and printed in full color. Contractor is responsible for all associated costs.
- **Website** – Contractor shall develop and maintain a website with a page dedicated to City to enable Customers to contact Contractor and to display holiday schedules, proper HHW

disposal procedures, which materials are to be placed in Recyclables Containers and other useful information. Contractor will also provide outreach through other technologies that may be developed.

- **Green Street Scene** - Contractor shall provide a web-based Recycling program and educational tool "The Green Street Scene" to Customers. Contractor will provide guest speakers and written materials on Recycling to the City, and educational tours of Contractor's MRF and video lectures regarding Contractor's MRF and compost site for community groups. Contractor may replace "The Green Street Scene" with an alternative, comparable interactive media subject to City's approval.
- **Newspaper Articles and Advertisements** - City may request to have Contractor develop and publish up to six (6) articles and advertisements in local papers to promote Recycling efforts and inform regarding upcoming City Solid Waste related events and programs. Contractor shall coordinate publishing dates with City to achieve optimal timing of event notifications.

10.5.3 News Media Relations

The Contractor shall notify the City by facsimile of all requests for news media interviews related to this Agreement within twenty-four (24) hours. Before responding to any inquiries involving controversial issues, the Contractor will discuss proposed response with the City. Notification should be sent to: Public Works Director, by e-mail or as Public Works Director may otherwise direct. Copies of draft news releases or proposed trade journal pictures or articles shall be submitted to the City for prior review and approval at least five (5) working days in advance of release. Copies of articles resulting from media interviews or news releases shall be provided to the City within five (5) days after publication.

10.5.4 Contractor Representative

Contractor shall retain on its staff an individual who shall, as part of his or her job function, routinely visit civic groups, school assemblies, homeowners' associations, apartment complexes and businesses, to promote and explain the Recycling programs Contractor offers, and participate in demonstrations, and civic events.

10.5.5 Community Events

Contractor shall participate in and promote Recycling and other Diversion techniques at community events and local activities. Contractor shall sponsor booths as such events, promote events and provide public education on the City's Solid Waste programs to attendees.

10.6 Waste Generation/Characterization Studies

Contractor acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939. Contractor agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed, by Customer type (Cart, Residential Bin, Commercial), to satisfy the requirements of AB 939 and other Solid Waste and Recycling legislation that may be passed into law. Contractor will at its sole expense conduct such a waste generation and characterization study upon request of City, but not more than once every two years.

ARTICLE XI

PERFORMANCE SURETIES, INSURANCE

11.1 Faithful Performance Bond

Concurrently with execution of this Agreement, the Contractor shall furnish to the City and maintain and file with the City Clerk a corporate surety bond, or other acceptable surety, approved as to form by the City Attorney, executed by the Contractor as principal and by a corporate surety in the sum of \$250,000.00 ("Performance Bond"). Such bond shall permit the City to draw upon it in the event the Contractor fails to perform its obligations hereunder or otherwise fails to pay any liquidated damages required to be paid as a result of such non-performance. The surety bond shall serve to secure the performance of the Solid Waste Handling Services, and the amount thereof shall in no way limit the damages which may be payable hereunder upon any breach hereof by the Contractor. The bond shall be renewable annually, but may be continued for additional one year terms by certificate at the option of the surety. If during the continuance of the Agreement, there is a lapse in coverage or cancellation of the surety bond, the Contractor shall notify and furnish, to the satisfaction of the City, a certificate extending the term.

11.2 Faithful Performance Letter of Credit

In addition to a corporate surety bond as noted in Section 11.1 above, Contractor shall furnish an irrevocable letter of credit in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), from a financial institution acceptable to the City and in a form acceptable to the City Attorney as security for the performance of this Agreement (the "LOC"). The LOC shall be the sole responsibility of Contractor, and shall be released in accordance with Section 11.5.

11.3 Forfeiture of Performance Bond

In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the performance bond which is necessary to recompense and make whole the City forfeited to the City. Upon partial or full forfeiture of the performance bond, Contractor shall restore the performance bond to its face amount within thirty (30) days of the City's declaration. Failure to restore the performance bond to its full amount within thirty (30) days shall be a material breach of the Agreement.

11.4 Forfeiture of Letter Of Credit

Thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, the LOC may be drawn upon by City for purposes including, but not limited to:

- a. Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City
- b. Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor, including but not limited to the liquidated damages described in Section 10.4.

City may draw upon the entire LOC and convert it to a cash deposit if Contractor fails to cause the LOC to be extended or replaced with another satisfactory letter of credit no later than 60 days prior to its expiration during the term hereof.

11.5 Performance Security Beyond Service Term

Some Agreement requirements extend beyond the Term of this Agreement and other requirements, such as minimum Diversion rates per Section 5.5.6, will not be substantiated until after the final service date. Therefore, the Contractor shall not terminate the performance bond or letter of credit, and will renew them to ensure continuous availability to the City, until receiving a written release from the City. The City will permit the performance bond and/or letter of credit to expire at the end of 36 months after the end of the Term, unless the City informs the Contractor of a specific outstanding Agreement requirement not yet met. Permission from the City to discontinue holding these performance securities does not relieve Contractor of payments to the City that may be due, or may become due.

11.6 Insurance

The Contractor shall at all times during the Term of this Agreement, at its own cost and expense, obtain and maintain insurance on all the Operating Assets meeting the requirements set forth in Appendix C. If any useful part of the Operating Assets shall be damaged or destroyed, the Contractor shall as expeditiously as may be possible, commence and diligently prosecute the repair or replacement of the damaged property so as to restore the same to use to the extent required to perform the Solid Waste Handling Services in accordance with this Agreement.

ARTICLE XII

COMPENSATION

12.1 Customer Billing and Contractor Compensation

City shall pay to the Contractor a monthly payment for the Solid Waste Handling Services provided by the Contractor hereunder to Residential Cart Customers Billed on the property tax roll the “Residential Service Contractor Payment”, which shall be computed in accordance with the provisions of this Article and may be adjusted from time to time as provided in this Agreement. All other Customers and services shall be Billed by Contactor. Compensation described under this Section 12.1 constitutes the entire compensation of the Contractor for the Solid Waste Handling Services. The Contractor waives any right it has or may have at any time during the Term of this Agreement to seek to have the monthly Residential Service Contractor Payment or other fees increased under any theory of fact or law by any Governmental Body, except other than as provided for in this Agreement.

12.1.1 Residential Cart Service Billing

(A) City Billing. City is responsible for Billing Residential Cart Customers for monthly Collection services. City shall pay Contractor monthly for services rendered during the prior calendar month. The Residential Service Contractor Payment shall be equal to the Residential Cart Customer unit count provided for the County property tax roll billing for each fiscal year July 1 to June 30 multiplied by the approved monthly Residential Cart Service Rate for the corresponding fiscal year. If Billings for Residential Cart Service Customers are added to, or removed from the County property tax roll Billing during the fiscal year, City will adjust the unit count accordingly. City assumes risk of non-payment by Residential Cart Customers through Customer’s non-payment of its property tax bill.

City shall submit payment to Contractor on a monthly basis, by the 15th of each month representing services provided during the previous month, noting the number of Residential Cart accounts upon which the payment is based. If Contractor wishes to dispute this Residential Cart Customer count, Contractor shall do so no later than sixty (60) days after receipt of the first payment following a Customer count adjustment, or Contractor shall be assumed to accept this count for the remainder of the fiscal year, subject to subsequent adjustments for specific Customers that are added to or removed from tax roll billing.

- (B) Offsets. Prior to making the Residential Service Contractor Payment payment to the Contractor each month, the City may, but is not required to, retain any City fee amounts the City is entitled under Section 12.4, that are overdue.
- (C) Liquidated Damages. Prior to making the Residential Service Contractor Payment to the Contractor in each month, the City may retain any liquidated damages due and owing to the City from the Contractor.
- (D) Escalation of the Residential Service Contractor Payment Schedule. Each amount contained in the Residential Service Contractor Payment Schedule shall be adjusted as provided in Appendix B hereto.
- (E) Contractor Billing of Approved Ancillary Services. Contractor shall be responsible for Billing Customers directly for Bulk Waste Collection above the annual maximums, or for push-out/push-back service if Customer requests such service and is not entitled to receive it at no additional charge.
- (F) Contractor Billing Prior to Placement on Tax Roll. Prior to placement of a Residential Cart Customer's Billing on the tax roll, which may happen due to new construction, change of ownership, or otherwise, Contractor shall be responsible for Billing Residential Cart Customers. Rates and fees shall be the same for City and Contractor-Billed Customers. Contractor assumes risk of non-payment.
- (G) Contractor Billing in Place of Tax Roll Billing. If select Residential Cart Customers are to remain directly Billed by Contractor (as approved by City, such as for Multi-Family complexes or other cases in which the City does not place the Billing on the tax roll), rates and fees shall be the same for City and Contractor-Billed Customers. Contractor assumes risk of non-payment.
- (H) Annual Settlement Statement. Within sixty (60) days after the end of each Agreement Year during the term of this Agreement, City or Contractor may deliver an annual settlement statement (the "Annual Settlement Statement") reflecting any deviations between the Residential Service Contractor Payment payable with respect to such year and the payment as calculated based upon the actual Customer count Billed on the property tax roll and the monthly Residential Cart Service Rate. This settlement is to be based only on errors that may or may not be found. City is not responsible for paying Contractor for Customers not Billed on the County property tax. If any deviation is determined, an adjustment of such amount shall be made in the City's Residential Service Contractor Payment for the Billing Period immediately following the determination.

12.1.2 Residential Bin and Commercial Service Billing

In consideration for providing Solid Waste Handling Services to Residential Bin Service Recipients and Commercial Service Recipients pursuant to this Agreement, the Contractor shall be entitled to charge each such Service Recipients fees in accordance with the Approved Rate Schedule in Appendix E. Fees included in the approved rate schedule constitute the entire compensation of the Contractor for Solid Waste Handling Services provided to such Service Recipients pursuant to this Agreement. Contractor may not assess charges not included in the Approved Rate Schedule; if services are requested beyond the scope of services contemplated under this Agreement, Contractor shall request approval from City to assess appropriate fees. The Contractor waives any right it has or may have at any time during the Term of this Agreement to seek to have the Multi-Family Home Rate and the Commercial Rate increased under any theory of fact or law by any Governmental Body other than as provided for under this Agreement. Contractor shall be responsible for bad debt for Residential Bin, Commercial and Temporary Service Customers.

12.1.3.1 Commercial Rates

The Contractor shall render a statement (a "Commercial Billing Statement") to each Commercial Service Recipient by the 15th day of the month, which Billing Statement shall set forth a calculation of the applicable Commercial Rates for the month in which the Billing Statement is rendered, as determined by using the Commercial Rate Schedule. Such Commercial Rates shall be due to the Contractor within twenty (20) days of the date of the Commercial Billing Statement. All Solid Waste Handling Services shall be itemized. The Contractor shall be responsible for determining and maintaining the Service Recipient name, service address, billing address and all other pertinent customer account data. Some Multi-Family Buildings and Commercial Premises share Solid Waste collection service with an adjacent property. The Contractor is responsible for determining and offering shared billing service to such Service Recipients to the extent they have arranged with the adjacent property to share the collection service costs.

12.1.3.2 Multi-Family Building/Residential Bin Rates

The Contractor shall render a statement (a "Multi-Family Building Billing Statement") to each Multi-Family Building Service Recipient receiving Bin Refuse service by the 15th day of the month, which Billing Statement shall set forth a calculation of the applicable Multi-Family Building Rates for the month in which the Billing Statement is rendered, as determined by using the Multi-Family Building Rate Schedule. Such Multi-Family Building Rates shall be due to the Contractor within twenty (20) days of the date of the Multi-Family Building Billing

Statement. The Contractor shall be responsible for determining and maintaining the Service Recipient name, service address, billing address, number of units at the building, and all other pertinent customer account data. Units per building will be used in determining the per dwelling unit Recyclables Collection fee. Some Multi-Family Buildings and Commercial Premises share Solid Waste collection service with an adjacent property. The Contractor is responsible for determining and offering shared billing service to such Service Recipients to the extent they have arranged with the adjacent property to share the Collection Service costs.

Note that Multi-Family Building Customers for which each Dwelling Unit receives individual Refuse, Recyclables and Green Waste Service, not Bin service, will be treated as Residential Cart Service Customers and Billed in accordance with 12.1.1, either by City through the County tax roll or directly by Contractor. Applicable fees and services will be the same as for Residential Cart Customers.

12.1.3.3 Billing Estimates and Adjustments

To the extent that the actual value of charge, credit, index value or any other item in any Billing Statement can be accurately determined at the Billing Statement date, such item shall be billed on a good faith estimated basis, and an adjustment shall be made to reflect the difference between such estimated amount and the actual amount of such item on the Billing Statement next following the date on which the Contractor learns the exact amount of such item.

For Customers who request temporary Bin Service, Contractor will accept major credit cards for payment. Temporary-service Customers who do not have an existing account with Contractor and do not use credit cards may be required by the Contractor to post a security deposit or to pay on a "Cash on Delivery" (C.O.D.) basis. Any unused portion of a security deposit will be refunded to the Customer within five (5) business days of the termination of service.

12.1.4 No Other Charges Permitted

Contractor shall have no right to, and shall not, impose any fee or charge on any Service Recipient or other person for Solid Waste Handling Services except as provided in accordance with this Agreement and the Approved Rate Schedule in Appendix E.

12.2 Billing Disputes

(A) Residential Service Contractor Payment. If the Contractor disputes the amount paid in any monthly payment relating to the Residential Service Contractor Payment for services

provided, Contractor will provide the City with written objection within thirty (30) days of the receipt of such payment indicating the portion of the paid amount that is being disputed and providing all reasons then known to Contractor for its objection to or disagreement with such amount. If the City and the Contractor are not able to resolve such dispute within thirty (30) days after the City's objection, either party may refer such dispute to mediation pursuant to Section 13.12 hereof. If any such amount is adjusted in the Contractor's favor pursuant to agreement, mediation or otherwise, the City shall pay the amount of such adjustment to the Contractor, with interest thereof at the Overdue Rate from the date such disputed amount was due the Contractor to the date of payment in full of such amount. Nothing contained in this subsection shall limit the authority of any authorized officer of the City or any other governmental agency to raise a further objection to any amount paid to, or requested by, the Contractor pursuant to an audit conducted pursuant to Applicable Law.

(B) Residential Bin, Commercial and Temporary Service Rates If any Service Recipient disputes a Billing Statement provided by the Contractor, the Contractor shall provide notice thereof to the Public Works Director, with a copy of the Billing Statement and the nature of the dispute (including copies of any correspondence from the Service Recipient). The Contractor shall use its best efforts to resolve such disputes within seven (7) days of receipt of notice from the Service Recipient of such dispute. If such dispute cannot be mutually resolved by the Contractor and the Service Recipient within such seven (7) day period, the dispute will be submitted to the Public Works Director for binding dispute resolution. The Contractor acknowledges that the determination of the Public Works Director relating to such dispute shall be final and unappealable.

12.3 Delinquent Accounts

Except for Residential Cart Customers added to the County property tax rolls pursuant to Section 12.1.1(A) and subject to the limitations under Section 12.3.(5) below, the Contractor shall be responsible for collecting unpaid Billings, subject to limitations under this Section 12.3, (5) below. The following steps shall be taken in regards to delinquent accounts:

- (1) The Contractor will notify the Service Recipient in writing when the bill is ten (10) or more days overdue and attempt by telephone to contact the property owner that stop service will be initiated 45 days after the date of the initial Billing Statement if payment is not made.
- (2) The Contractor will implement stop service when the Customer has not paid within forty-five (45) days of the date of the initial Billing Statement.
- (3) The Contractor will remove the solid waste container two (2) weeks from the date stop service is initiated.

(4) The Contractor will impose a \$45.00 fee for Commercial and Multi-Family Service Recipients and, \$25.00 for Single Family Homes to return the container after it has been removed for the reason of a delinquent account.

(5) The Contractor will refer the delinquent account to a collection agency or seek legal remedies in small claims court fifteen (15) days after removal of the container. The Contractor shall notify the City at least five (5) days in advance when a Container has been placed on stop service or will be removed. The City reserves the right to direct the Contractor not to proceed or to modify these procedures in special circumstances. The City shall not have any obligation to reimburse the Contractor for delinquent accounts.

12.4 Payments Due City

12.4.1 Payments Due From Contractor

As part of its consideration for entering into this Agreement, and for the exclusive franchise, right and privilege to provide Solid Waste Handling Services as specified herein, Contractor shall provide the payments listed below in this Section 12.4.1. These payments are due from the Contractor as part of the approved compensation and may not be charged in addition to the approved rates.

12.4.1.1 Contracting Fee

Contractor shall pay to City a Contracting Fee in a one-time lump sum payment of one hundred fifty thousand dollars (\$150,000) within seven days of execution of this Agreement to reimburse the City for costs it incurred in connection with entering this Agreement.

Contractor rates as approved in Appendix E are inclusive of this funding and this shall not be additionally or separately Billed to Customers.

12.4.1.2 Recycle Ranger Funding

In order to support City's outreach and administration of various Solid Waste programs, public education efforts and awards, Contractor shall provide the City with quarterly funding of \$16,750 (\$67,000 per year), due July 1, October 1, January 1 and April 1 of each Agreement Year, beginning July 1, 2011. Each July 1, this payment shall be adjusted by the percentage change in the average annual Consumer Price Index for all urban wage earners - all items published by the United States Department of Labor, Bureau of Labor Statistics for the Los Angeles - Long Beach -Anaheim statistical area for the calendar year ended the previous December over the average annual Consumer Price Index for all urban wage earners - all items published by the United States Department of Labor, Bureau of Labor Statistics for the

Los Angeles - Long Beach -Anaheim statistical area for the preceding year. Contractor rates as approved in Appendix E are inclusive of this funding and this shall not be additionally or separately Billed to Customers or itemized on Billings.

12.4.1.3 Recyclables Rebate

Contractor shall pay to City a Recyclables Rebate of \$37,500 per quarter (\$150,000 per year), due July 1, October 1, January 1 and April 1 of each Agreement Year, beginning July 1, 2011. Each July 1, this payment shall be adjusted by the percentage change in the average annual CPI Less Food and Energy for the calendar year ended the previous December over the average annual CPI Less Food and Energy for the preceding year. Contractor rates as approved in Appendix E are inclusive of this funding and this shall not be additionally or separately Billed to Customers or itemized on Billings.

12.4.1.4 Solid Waste Vehicle Road Impact Reimbursement

Contractor shall reimburse the City for impacts to City roads from Solid Waste vehicles in the amount of \$62,500 per quarter (\$250,000 per year), due July 1, October 1, January 1 and April 1 of each Agreement Year, beginning July 1, 2011. Each July 1, this payment shall be adjusted by the percentage change in the average annual CPI Less Food and Energy for the calendar year ended the previous December over the average annual CPI Less Food and Energy for the preceding year. Contractor rates as approved in Appendix E are inclusive of this funding and this shall not be additionally or separately Billed to Customers or itemized on Billings.

12.4.2 City Fees Collected by Contractor

12.4.2.1 City Fee Payment Levels

City may instruct Contractor to collect fees through its billing of Commercial Service Recipients, Multi-Family Building Service Recipients and to remit such fees to City at no additional cost. Such fees initially include: a percentage-based AB 939 Fee for all Customers; a per unit Administration Fee for Multi-Family Buildings and Single-Family Homes; a percentage-based Administrative Fee for Commercial Service Recipients; and a per unit Household Hazardous Waste Fee for Multi-Family Buildings and Single-Family Homes. All such City Fees shall be added to the applicable rates set forth in Appendix E. City shall provide the initial fee levels to Contractor prior to Contractor's initial billings. The City shall have the right to change the levels or types of these charges (including the establishment of a Franchise Fee to offset the City's expenses in administering this Agreement and fees to compensate the City for the use of and any damage to its streets, sidewalks, curbs and gutters and other infrastructure) by notifying the Contractor in writing of such changes. Such notice

shall specify the date on which the Contractor shall implement the new or changed fee and begin the collection thereof from the Service Recipients.

12.4.2.2 Submission of City Fee Payments

All fee payments received by the Contractor each calendar month shall be submitted to the City by the 15th day of the following month to: City of Redondo Beach, ATTN: Public Works 531 North Gertruda Ave., Redondo Beach, CA 90277. If the fees are not paid on or before the due date, Contractor shall pay to City a penalty in an amount equal to ten percent (10%) of the amount owing for that month, plus interest at a rate of one and one-half (1.5%) per month.

If fee payment is not received in a timely manner, City may withhold, but is not obligated to withhold, such fees from City's payment to Contractor of the Residential Service Contractor Payment.

12.5 Future Fees

City may implement new or increased fees. City will instruct Contractor whether to Collect such fees: 1) in addition to Contractor rates as approved in Appendix E and as described in Section 12.4.2 above, 2) as part of monthly Contractor rates as fees are collected under Section 12.4.1 above, in which case Contractor shall be entitled to a rate adjustment in an amount sufficient to recover the fee from Customers; or 3) as City otherwise instructs Contractor. City may set deadlines and late fees, and additional fees would be subject to audit.

ARTICLE XIII

DEFAULT, TERMINATION FOR CAUSE AND DISPUTE RESOLUTION

13.1 Remedies for Breach

In addition to any specific rights or remedies set forth in this Agreement, the parties agree that, in the event that either party breaches or fails to perform any of its obligations, agreements, duties, or covenants under this Agreement or in the event any representation or warranty made by either party hereunder is untrue in any material respect, the other party shall have the right to take any action and seek any remedy at law or in equity it may have to obtain payment for any damages resulting therefrom. The Contractor acknowledges that the City intends to rely on the Contractor to provide City Solid Waste collection, transportation, disposal, recycling and other services hereunder for the protection of the public health, safety and welfare, and that therefore the City may enforce any action for specific performance the Contractor's obligations hereunder to provide the Solid Waste Handling Services on the terms and conditions provided herein.

13.2 City's Right to Perform Services

13.2.1 Contractor Failure to Collect for any Reason.

Should the Contractor, for any reason whatsoever, fail, refuse or be unable to collect, transport and dispose of any or all, City Solid Waste which it is hereto obligated to collect, transport and dispose of in the time and manner and as herein in this Agreement provided, for a period of more than forty-eight (48) hours, or if in any lesser time period City Solid Waste should accumulate in the City to such an extent, in such manner, or for such time that the Public Works Director or City Council should find that such accumulation endangers or menaces the public health, safety or welfare, then in any of those events, City shall have the right, upon notice to the Contractor, during the period of such emergency, to take possession of any or all of the Operating Assets necessary in the collection, transportation and disposal of the City Solid Waste produced, kept or accumulated in the City, and to use such property to collect, transport and dispose of any or all City Solid Waste which the Contractor would otherwise be obligated to collect, transport and dispose of pursuant to this Agreement. The Contractor agrees that in such event it will fully cooperate with City to effect such a transfer of possession of the Operating Assets for City's use of the same for the collection, transportation and disposal of City Solid Waste. The Contractor agrees that, in such event, the City may take

possession of and use all of the Operating Assets for the above-mentioned purposes without paying the Contractor or any other person any rental or any other charges or compensation whatsoever for such possession and use. The City may in such circumstances operate the Operating Assets with municipal employees or cause the Operating Assets to be operated by subcontractors to the City.

13.2.2 Contractor Repair

The Contractor further agrees that, in the circumstances described in Section 13.2.1 above, the Contractor shall, if City so requests, keep in good repair and condition all of the Operating Assets, service all motor vehicles necessary for continued operations with gasoline, oil and other necessary service, and provide such other service as may be necessary to render the Operating Assets operational and ready for use in collecting and transporting and disposing of City Solid Waste, all free of any and all costs or expenses to the City.

13.2.3 City Use of Contractor Personnel

The Contractor further agrees that, in the circumstances described in Section 13.2.1 above, the City, if it so desires, may immediately engage any or all personnel necessary for the collection, transportation and disposal of City Solid Waste produced, kept or accumulated in the City, and that such employees or personnel may include, if the City so desires, employees or personnel theretofore or then employed by the Contractor. The Contractor further agrees that, if the City should so request, the Contractor shall furnish to the City, free of cost, services of any or all management or office personnel then in the employ of the Contractor whose services are necessary for such operations.

13.2.4 Contractor Reimbursement

The Contractor further agrees that in the circumstances described in Section 13.2.1 above, it shall reimburse the City for any and all costs and expenses incurred by the City in taking over possession of the Operating Assets and in the collection, transportation and disposal of City Solid Waste in such manner and to such an extent as would otherwise be required of the Contractor under the terms of this Agreement, which costs and expenses are in excess of the amount that the City would have been required to pay the Contractor for providing services. In such event the City shall submit a reimbursement statement to the Contractor. Each statement shall list such costs and expenses, and the reimbursement shall be made no later than five (5) days from and after each such submission. In the event the reimbursement is not made, the City may draw upon any security required to be maintained thereunder.

13.2.5 Contractor Resumption of Service

It is further agreed that the City may at any time, at its discretion, relinquish possession of any or all of the Operating Assets to the Contractor and thereupon demand that the Contractor resume the collection, transportation and disposal of City Solid Waste as provided in this Agreement whereupon the Contractor shall be bound to resume the same.

13.2.6 City Performance Not a Taking

It is specifically understood and agreed that the City's exercise of its rights under this Section 13.2 (1) does not constitute a taking of private property for which payment must be made; (2) shall not create any liability on the part of the City to the Contractor; and (3) shall not affect, and shall be in addition to, the indemnity provisions of Section 15.1 of this Agreement are meant to include circumstances arising under this Section.

13.2.7 Duration of City's Rights

The City's right under Section 13.2 hereof to retain temporary possession of the Operating Assets, and to render collection, transportation and disposal services, shall terminate at the earlier of (1) the time when such services can, in the judgment of the City, be resumed by the Contractor, or, (2) the time when the City no longer reasonably requires such Operating Assets, as determined by the City, or (3) the expiration of twelve (12) months from the date the City took possession.

13.3 Events of Default of Contractor

13.3.1 Specific Events of Default

Each of the following shall specifically constitute an event of default on the part of the Contractor:

- (A) Improper Assignment of Contract.** Any transaction, without any requirement of notice or cure opportunity, not complying with the requirements of Section 4.8.
- (B) Fraud or Deceit or Misrepresentation.** If the Contractor engages in, or attempts to practice, any fraud or deceit upon City or makes a misrepresentation regarding material information to City.
- (C) Insolvency or Bankruptcy.** If Contractor becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.

- (D) **Failure to Maintain Insurance Coverage.** If Contractor fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by Section 11.6 and Appendix C of this Agreement.
- (E) **Failure to Provide Performance Bond and/or Letter of Credit.** The failure of the Contractor to provide or maintain the performance bond and letter of credit as required pursuant to Sections 11.1 and 11.2, without any requirement of notice or cure opportunity.
- (F) **Violations of Regulation.** If Contractor violates any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred until a final decision adverse to the Contractor is entered.
- (G) **Failure to Perform.** If Contractor ceases to provide all or a portion of the Collection, processing or Recycling services, or any other Solid Waste Handling Services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of Contractor.
- (H) **Failure to Pay.** If Contractor fails to make any payments required under this Agreement and/or refuses to provide City, within fifteen (15) days of the demand, with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- (I) **Failure to Cooperate with Audits.** Failure to complete, perform or cooperate with any audit as described by this Agreement.
- (J) **Failure to Submit Reports or Documentation.** Failure to complete or to provide required reports or documents to City as required by this Agreement.
- (K) **Acts or Omissions.**
 1. Any act or omission by Contractor relative to the services provided under this Agreement which violates the terms, conditions, or requirements of this Agreement, or AB 939, or any law, statute, ordinance, order, directive, rule, or regulation issued pursuant to AB 939 shall constitute a default by the Company. Any failure to correct or remedy any such violation within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or

remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter shall constitute a default by Contractor.

2. Any situation in which Contractor or any of its officers, directors or employees are found guilty of any crime related to the performance of this Agreement, or of any crime related to antitrust activities, illegal transport or Disposal of hazardous or toxic materials, or bribery of public officials shall constitute a default by Contractor. The term "found guilty" shall be deemed to include any judicial determination that Contractor or any of Contractor's officers, directors or employees is guilty as well as any admission of guilt by Contractor or any of Contractor's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge."

- (L) False or Misleading Statements.** Any representation or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- (M) Attachment.** The seizure of, attachment of, or levy on, the operating equipment of Contractor, including, without limits, its equipment, maintenance or office facilities, or any part thereof.
- (N) Suspension or Termination of Service.** Any termination or suspension of the transaction of business by Contractor, including, without limitation, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) consecutive days, unless, and only to the extent, termination or suspension is excused under Section 15.4.
- (O) Failure to Provide Assurance of Performance.** If Contractor fails to provide reasonable assurances of performance as required under Section 13.13.
- (P) Commingling of Recyclables With Refuse/Landfilling of Recyclables.** If Contractor empties Containers of properly set out Recyclable Materials or Green Waste into a Refuse load, or transports Recyclable Materials or Green Waste to a landfill or other location at which the material will not be diverted from landfilling (with the exception of Green Waste used as alternative daily cover provided full Diversion credit is received).

- (Q) Failure to Meet 59% Diversion Goal.** Contractor fails to divert at least 59% of all Solid Waste it Collects exclusively under this Agreement, per Section 5.5.6, for two consecutive calendar years, beginning calendar year 2013.
- (R) Department of Resources, Recycling and Recovery Compliance Issues.** Department of Resources, Recycling and Recovery issues a compliance order or assesses a penalty against City in regards to compliance with AB 939 due in any part to Contractor's failure to meet any requirement under this Agreement.
- (S) Missed Collections.** The failure of the Contractor, except as may be excused by Uncontrollable Circumstances to make at least 99.95% of the gross number of scheduled collections of City Solid Waste from Residential Premises, Multi-Family Premises, and Commercial Premises in any Agreement Year.

Contractor shall have seventy-two (72) hours (excluding Saturday, Sunday and holidays included in Section 6.11) from the time it is given notification by City to cure any default arising under subsections D, E, G, H, I, J, M, N, O and P provided, however, that City shall not be obligated to provide Contractor with a notice and cure opportunity if Contractor has committed the same or similar breach within a twenty-four (24) month period. It is expressly understood that Contractor is not entitled to receive notice of default, or to cure such default, with respect to those matters listed in subsections A, B, C, F, K, L, Q, R and S above.

13.3.2 Other Failures to Perform

The City may consider the Contractor to be in default due to Contractor's failure or refusal of the Contractor to perform any term, covenant, obligation or condition contained in this Agreement other than an event of default specifically described in Section 13.3.1 above, provided that:

- (a) The City has given prior written notice to the Contractor, stating that a specific failure or refusal to perform exists which will unless corrected, constitutes a material breach of this Agreement on the part of the Contractor and which will, in its opinion, give the City a right to terminate this Agreement for cause under this Section unless such default is corrected within fifteen (15) days, and
- (b) The Contractor has neither disputed the City's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement pursuant to the procedure in Section 13.12 below nor corrected or diligently taken steps to correct such default within such fifteen (15) day period from receipt of the notice given pursuant to the clause (a) of this subsection (but if the Contractor shall have diligently taken steps to

correct such default within a reasonable period of time, the same shall not constitute an event of default for as long as the Contractor is continuing to take such steps to cure such default and pursues such cure to completion within a reasonable amount of time which shall in no event exceed ninety (90) days).

13.4 Termination Liquidated Damages Payable to the City

If this Agreement is terminated by the City for cause, as a result of an event of default or other material breach by the Contractor hereunder, the Contractor immediately upon receipt of the City's termination notice shall pay to the City as liquidated damages (1) all amounts payable to the City by the Contractor as liquidated damages up to such date of termination, (2) an amount equal to the sum of all increased payments, damages, penalties incurred by or on behalf of the City as a result of the termination of this Agreement, and (3) the sum of \$250,000.

13.5 Right to Terminate Upon Default and Right to Specific Performance

If Contractor commits a material breach of this Agreement, including but not limited to any event of default listed in Section 13.3 above (and, if permitted to cure under the Agreement, does not cure such breach within the allotted time), City shall be entitled to unilaterally terminate this Agreement or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other conditions it deems appropriate short of termination) as it shall deem proper. Should City decide to terminate this Agreement upon a default by Contractor, City shall have the right to do so upon giving ten (10) days notice to Contractor, and shall not be required to take any further action (such as holding any hearing, bringing any suit or taking any other action). Upon termination by City, Contractor shall be compensated only for those services which have been adequately rendered to City prior to the termination date, and Contractor shall be entitled to no further compensation. Upon termination, City shall be entitled to damages caused by such violation and the resulting termination, including, but not limited to the liquidated damages provided for in Section 13.4 above.

City's rights to terminate this Agreement and to take possession of Contractor's operating Facility, to the extent necessary to continue uninterrupted service to the City, and/or equipment are not exclusive, and City's termination of this Agreement shall not constitute an election of remedies. Instead, such remedies shall be in addition to any and all other legal and equitable rights and remedies which City may have.

By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality service, the time required to effect alternative service, and the rights granted by City to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City

shall be entitled to seek injunctive relief and/or specific performance of any breach of this Agreement.

13.6 Waiver of Defenses

The Contractor acknowledges that it is solely responsible for providing the Solid Waste Handling Services described herein, and hereby irrevocably and unconditionally waives the following defenses to the payment and performance of its 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 the Contractor with regard to any provision of this Agreement.

13.7 Enforcement Costs

The Contractor agrees to pay to the City all fees and expenses incurred by or on behalf of the City in enforcing payment or performance of the Contractor's obligations hereunder if such non-performance results in a judicially determined breach or event of default by the Contractor.

13.8 Event of City Default - Failure to Pay.

The failure of the City to pay non-disputed amounts due and owing to the Contractor under this Agreement within forty (40) days following receipt of a Contractor invoice therefore may be considered by Contractor as an event of default. Contractor shall notify City of its failure to make proper payment and provide a reasonable opportunity to cure.

13.9 No Waivers

No action of the City or Contractor pursuant to this Agreement (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Agreement. No course of dealing or delay by the City or Contractor in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the City or the Contractor under this Agreement shall include any other or further exercise thereof or the exercise of any other right, power or remedy.

13.10 No Consequential or Punitive Damages

In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

13.11 Forum for Dispute Resolution

It is the express intention of the parties that all legal actions and proceedings related to this Agreement or to the Solid Waste Handling Services or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in courts of the State of California or the United States of America having appropriate jurisdiction.

13.12 Administrative Review of Disputes

In the event Contactor disputes the City's conclusion that a material breach has occurred pursuant to Section 13.3.2 above, Contractor may give City written notice of such dispute. Following the receipt of such notice by City, the parties shall attempt in good faith to resolve such dispute. The City agrees that it will not act to terminate this Agreement for cause over any alleged breach disputed under this Section 13.12 until the conclusion of the thirty (30) day resolution period provided for herein.

13.13 Assurance of Performance

City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as City may require. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall constitute an event of default.

13.14 Review of Services and Performance

At City's sole option, the City may hold a meeting or public hearing to review any and all reports provided by this Agreement and to review Contractor's performance and quality of service. Topics for discussion and review at the hearing include, but shall not be limited to services provided, customer complaints, rights of privacy, recommended amendments to the Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals

and regulatory constraints. The reports required by this Agreement shall be utilized as the basis for review. Additional documentation may be requested. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these may be considered. The Contractor shall be present and shall participate. If any noncompliance with the Agreement is found, the City may direct the Contractor to correct the inadequacies and the City may pursue all other legal and equitable remedies.

As a result of its findings following any meeting or public hearing pursuant to this Section 13.14, City may require Contractor to provide expanded or new services within a reasonable time and City may direct or take corrective actions for any performance inadequacies (although nothing contained in this provision should be construed as requiring City to hold any such meeting or public hearing in order to enforce any rights or remedies it has pursuant to the terms hereof). Should City require expanded or new services as a remedy for Contractor's failure to perform its obligations hereunder, no additional compensation shall be due for such services. Otherwise, any new or expanded services required of Contractor shall be subject to the provisions of Section 5.18.

ARTICLE XIV

TERM

14.1 Term of Agreement

The term of this Agreement (the "Term") shall be eight (8) years, commencing on July 1, 2011, and expiring June 30, 2019, subject to extension as provided in Section 14.2 below. Nothing in this Section 14.1 shall be construed as limiting City's right to terminate this Agreement for cause pursuant to Article XIII above.

14.2 City's Option to Extend Term

City shall have the sole option to extend the Term of this Agreement up to twenty-four (24) months following the initial contract term under Section 14.1. The City may, upon at least ninety (90) days advanced written notice to the Contractor prior to the expiration of the Term of this Agreement, exercise this extension option. If City provides this extension notice, the Agreement will automatically renew monthly, up to a maximum of twenty-four (24) months. This extension period shall terminate, upon the earlier of: (i) the expiration of the aforementioned twenty-four (24) months, or (ii) ninety (90) days following the date upon which City gives Contractor written notice of termination.

ARTICLE XV

MISCELLANEOUS PROVISIONS

15.1 Indemnification

Contractor hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, consultants and agents (collectively, "Indemnitees") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the acts or omissions of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement; and (2) the failure of Contractor, its officers, employees, agents, contractors and/or subcontractors to comply in all respects with the provisions of this Agreement, Applicable Laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses. The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the Indemnitees' negligence, but shall not extend to matters resulting from the Indemnitees' sole negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys acceptable to City) the Indemnitees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse City for any and all costs and expenses City incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including attorney's fees and any and all other costs incurred in overseeing any defense to be provided herein by Contractor.

Contractor, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend the Indemnitees in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, or asserting rights under the United States or California Constitutions or any federal or state law to provide Solid Waste Handling Services in the City.

THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

15.2 Hazardous Substances Indemnification

A. Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to City), reimburse, indemnify, and hold Indemnitees harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:

1. results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnitee is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or
2. relates to material Collected, transported, recycled, processed, treated or disposed of by Contractor.

B. Contractor's obligations pursuant to this section shall apply, without limitation, to:

1. any Claims brought pursuant to or based on the provisions of any Environmental Law;
2. any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation of Contractor of any Facility;
3. any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, Disposal, processing or use of any materials recovered by Contractor;
4. any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

C. The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor.

D. For purposes of this section, the term "Hazardous Contaminant" shall mean any Hazardous Substance, any Hazardous Waste, any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to any referenced statutory or regulatory provisions made before or after the date of execution of this Agreement.

E. THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

15.3 AB 939 Indemnification and Guarantee

A. To the extent authorized by law, Contractor agrees to indemnify and hold harmless City from and against all fines and/or penalties imposed by the Department of Resources, Recycling and Recovery, either directly on the City or as a result of a fine and/or penalty imposed on the Los Angeles Regional Agency (LARA), in the event the source reduction and Recycling goals or any other requirement of AB 939 are not met by City with respect to the waste stream Collected under this Agreement.

B. Contractor warrants and represents that it is familiar with City's waste characterization study as set forth in City's Source Recovery and Recycling Element (SRRE), and that it has the ability to and will provide sufficient programs and services to ensure City will meet or exceed the Diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for Diversion, and any other requirements) set forth in AB 939, with respect to that portion of the Solid Waste generated in City that is the subject of this Agreement.

15.4 Excuse from Performance

15.4.1 Uncontrollable Circumstances

The Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by an Uncontrollable Circumstance. The interruption or discontinuance of Contractor's services caused by one (1) or more Uncontrollable Circumstances shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from per-

forming its obligations hereunder by reason of an Uncontrollable Circumstance for a period of thirty (30) days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, and may contract with another party for Solid Waste Handling Services.

15.4.2 Labor Unrest

Labor unrest, including work stoppage or slowdown or sick-out conducted by Contractor's employees or directed at Contractor is excused from performance only to the extent that the following requirements are met:

- Contractor provides a contingency plan to the City prior to the execution of this Agreement demonstrating how services will be provided. Plan is subject to City approval and Contractor shall amend plan until it meets City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction.
- Contractor shall meet all requirements of this plan; if Contractor does not meet all requirements, City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Article XIII.

The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this section.

The interruption or discontinuance of Contractor's services caused by labor-related events excused under this Section 15.4.2 shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this section for a period of thirty (30) days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, and may contract with another party for Solid Waste Handling Services.

15.4.3 Notification in Uncontrollable Circumstances

The party experiencing an Uncontrollable Circumstance that qualifies for an excuse from performance under this Section 15.4 shall notify the other party by telephone and in writing on or promptly after the date the party first knows of the imminent or existing circumstances. Within two (2) days of the initiation of the event giving rise to the possibility of excuse from

performance, party will provide a written description of: 1) the event and the cause, 2) the date the event began and estimated duration, 3) the estimated impact on the other party and its obligations under this Agreement, and 4) potential mitigating actions which parties may take and any areas where costs and effects might be reduced. The party claiming to be adversely affected shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefore, reduce costs and resume performance under this Agreement. While the delay continues, the party claiming to be adversely affected shall give daily notice to the other party updating the information previously submitted.

15.5 Limited Recourse to the City

No recourse shall be had to the general funds or general credit of the City for the payment of any amount due the Contractor hereunder, or the performance of any obligation incurred hereunder, including the Residential Service Contractor Payment, for any Loss-and-Expenses of any nature arising from the performance or non-performance of the City's obligations hereunder. The sole recourse of the Contractor for all such amounts shall be to the funds held in the Solid Waste Fund. All amounts held in the Solid Waste Fund shall be held for the uses permitted required thereby, and no such amounts shall constitute property of the Contractor. The City shall make adequate provision in the administration of the Solid Waste Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

15.6 Relationship of Parties

Neither party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations or liabilities assumed by the other party hereto, whether accrued, absolute, contingent or otherwise, or whether due or to become due. The Contractor is an independent Contractor and Agreement holder and nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

15.7 Non-Discrimination

The Contractor shall not discriminate nor permit discrimination, in regards to employment, provision of services or otherwise, 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. The Contractor will take all actions reasonably necessary to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, national origin, sex, sexual orientation or physical or mental disability. Such action shall include, without limitation, recruitment and recruitment advertising; layoff or termination; upgrading,

demotion, transfer, rates of pay or other form of compensation; and selection for training, including apprenticeship.

The Contractor shall impose the non-discrimination provisions of this Section by contract on all Subcontractors hired with the City's consent to perform work related to performance of its obligations hereunder and shall take all reasonable actions necessary to enforce such provisions. The Contractor will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

15.8 Actions of the City in Its Governmental Capacity

Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the City in its governmental or regulatory capacity, or as limiting the right of the Contractor to bring any legal action against the City not based on this Agreement arising out of any act or omission of the City in its governmental or regulatory capacity.

15.9 Compliance with Applicable Law

The Contractor shall comply with the rules and regulations governing the Operation, use and services of the Designated Disposal Site, shall observe and perform all of the terms and conditions contained in the Act, the City Charter, the City Code and all other Applicable Law, shall obtain and maintain all Legal Entitlements required for the Operating Assets and the Solid Waste Handling Services, and shall comply with all valid acts, rules, regulations, orders and directions of any Governmental Body applicable to the Operating Assets and the Solid Waste Handling Services provided hereunder.

15.10 Rules and Regulations of City

The City shall have the power to establish rules and regulations relating to the accumulation, collection, recycling and disposal of City Solid Waste not inconsistent with the provisions of this Agreement, providing such rules and regulations are found to be reasonably necessary by the City for enforcement of the provisions of this Agreement, or any and all Applicable Laws and for the preservation of the public peace, health and safety. The Contractor agrees to comply with any and all such rules and regulations.

15.11 Taxes and Utility Charges

The Contractor shall pay all Taxes lawfully levied or assessed upon or in respect of the Operating Assets or the Solid Waste Handling Services, or upon any part thereof or upon any revenues of the Contractor therefrom, and provide and pay the cost of all Utilities necessary

for the operation of the Operating Assets and the provision of the Solid Waste Handling Services, when the same shall become due.

15.12 Binding Effect

This Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions hereof.

15.13 Subcontractors

The Contractor shall not utilize any subcontractors for the performance of the Solid Waste Handling Services except with the consent of the City, which may be withheld or delayed in its sole and absolute discretion. In the event subcontractors are utilized, the Contractor shall provide the City with direct access to a designated representative from the subcontractor, such designation not to be changed without prior approval of the City, except in cases of termination of the employee. The parties acknowledge that the City's direct contact with any subcontractors in no way eliminates the Contractor's responsibility to fulfill its obligations under this Agreement.

15.14 Amendments

Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by both parties.

15.15 Notice of Litigation

Each party shall deliver written notice to the other of any Legal Proceeding to which it is a party and which questions the validity or enforceability of this Agreement or any other related agreement executed by the City or the Contractor or any Legal Entitlement issued In connection herewith.

15.16 Notices

Any notices, reports or other communications required or permitted hereunder to be given to the City shall be in writing and shall be sufficiently given only if delivered in person to the City Clerk, City of Redondo Beach, Redondo Beach, California 90277 with a copy also delivered in person to the Public Works Director, City of Redondo Beach, 531 N. Gertruda Ave., Redondo Beach, California 90277. Any notices or communications required or permitted hereunder to be given to the Contractor shall be in writing and shall be sufficiently given if delivered in person to the Contractor at:

Chief Operating Officer
Athens Services
14048 Valley Boulevard
City of Industry, CA 91746

Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by written notice to the other party in the same manner as provided herein. Notices and communications given by mail hereunder shall be deemed to have been given five (5) days after the date of dispatch; all other notices shall be deemed to have been given upon receipt.

15.17 Parties in Interest

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the parties to it and their representatives, successors and permitted assigns.

15.18 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 moneys which 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.

15.19 Contractor's Investigation

Contractor has made an independent investigation (satisfactory to Contractor) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

15.20 City Free to Negotiate with Third Parties

City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste for periods during which this Agreement has expired or been terminated. Without limiting the generality of the foregoing, City may solicit proposals from Contractor and from third parties for the provision of Solid Waste Handling Services which are the subject of this Agreement, including without limitation Collection services, Disposal services, Recycling services, Green Waste services and processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect

upon the expiration or earlier termination of this Agreement pursuant to Article XIII or otherwise.

15.21 Privacy

Contractor shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939. This provision shall not apply to reports or records provided to City pursuant to this Agreement.

15.22 Proprietary Information, Public Records

The City acknowledges that a number of the records and reports of Contractor are proprietary and confidential. Contractor is obligated to permit City inspection of its records on demand and to provide copies to City where requested. City will endeavor to maintain the confidentiality of all proprietary information provided by Contractor. Notwithstanding the foregoing, any documents provided by Contractor to City that are public records may be disclosed pursuant to a proper public records request.

15.23 Section Deleted

15.24 Cooperation in Preparation for Termination or Expiration of Contract

Prior to, and at, the end of the Term or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent Solid Waste enterprise it designates to assure a smooth transition of Solid Waste Handling Services. Contractor's cooperation shall include, but not be limited to, providing route lists, Billing information and other operating records needed to service all Premises covered by this Agreement. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Contractor shall be responsible for coordinating transfer immediately after Contractor's final pickups, so as not to disrupt service. Contractor shall provide City with detailed route sheets containing service names and

addresses, Billing names and addresses, monthly rate and service levels (number and size of Containers and pickup days) at least 90 days prior to the transition date, and provide an updated list two weeks before the transition and a final list of changes the day before the transition. Contractor shall provide means of access to the new service provider at least one full business day prior to the first day of Collection by another party, and always within sufficient time so as not to impede in any way the new service provider from easily servicing all Containers.

15.25 Further Assurances

Each party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

CITY OF REDONDO BEACH

Dated: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ARAKELIAN ENTERPRISES, INC. DBA ATHENS SERVICES

Dated: _____

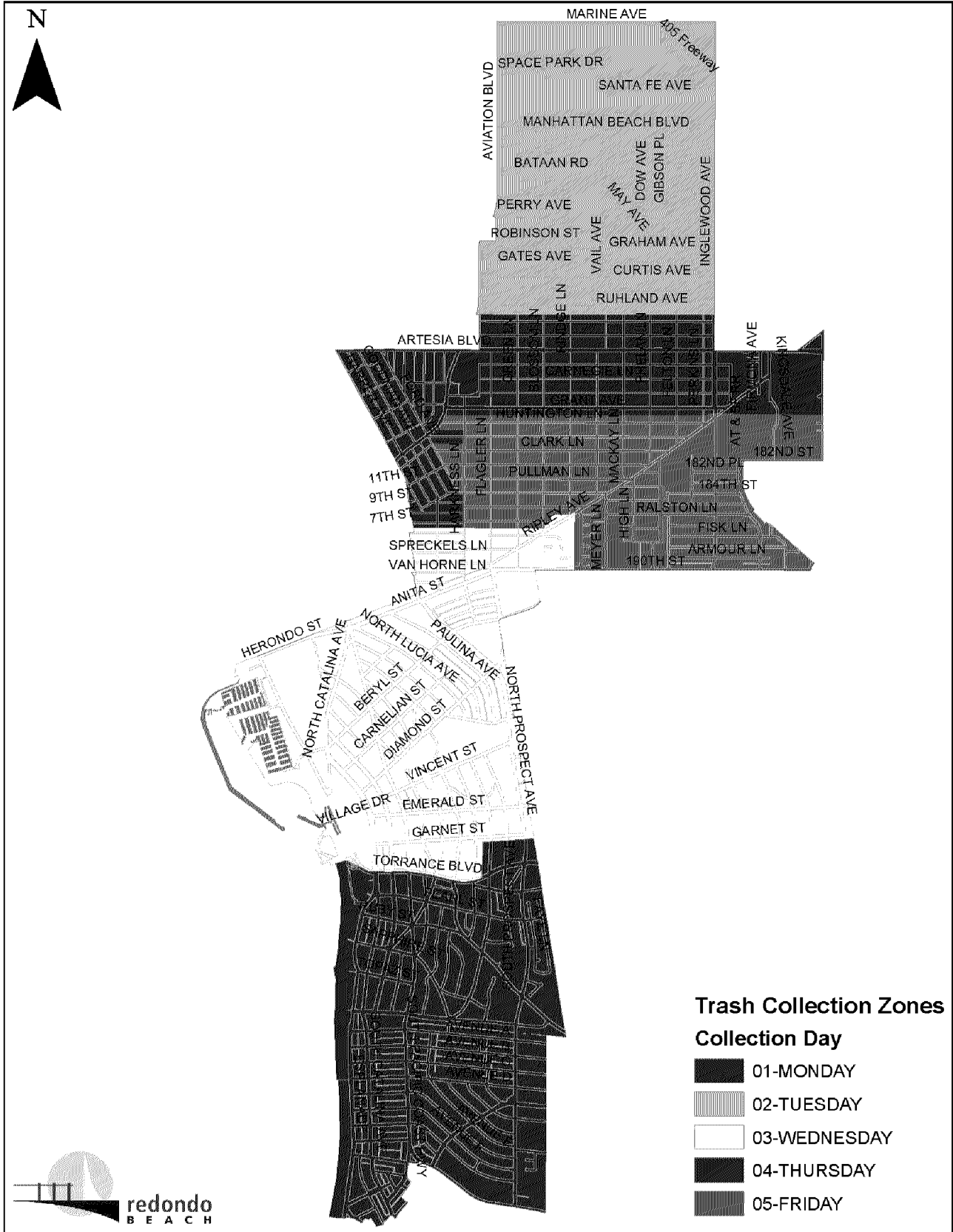
By: _____
Name:
Title:

APPENDIX A

MAP OF CITY

The License Area per Section 4.1.2 reflects the area within the City boundaries included in the following City map, and as the boundaries may be adjusted due to annexation during the term of this Agreement, except to the extent that Collection by the Company within that annexed territory would violate the provisions of Public Resources Code Section 49520.

The following map also indicates Residential Cart Collection days by area; this schedule is not permitted to be altered without approval by City.



APPENDIX B

RATE ADJUSTMENT SUBMITTAL REQUEST FORM

B.1 General

The maximum rates set forth in Appendix E, and as more fully defined as Contractor Compensation in this Appendix, shall be the maximum amount Contractor may charge Customers as full, entire and complete compensation due pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, letters of credit, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. Contractor shall impose no other charges for services provided to Customers unless approved by the City's Public Works Director.

B.2 Initial Rates

The maximum rates that Contractor may charge Customers through the Rate Year ending June 30, 2012, shall not exceed the maximum rates set forth in Appendix E.

B.3 Schedule of Future Adjustments

Beginning with the Rate Year starting July 1, 2012 and ending on June 30, 2013 and for all subsequent Rate Years, Contractor may request an annual adjustment to the maximum rates shown in Appendix E. The Contractor shall submit its request in writing, to be received by City in Person or via certified mail, by the preceding February 15th, and shall be based on the method of adjustment described in Section B.4. Failure to submit a written request by February 15th shall result in Contractor waiving the right to request such an increase for the subsequent Rate Year. If the adjustment would have resulted in a decrease to rates, City may implement the adjustment calculated in accordance with Section B.4 below. An adjustment to the maximum rates is subject to the approval of the City Council at a public hearing and may be effectuated through resolution of the City Council without necessitating formal amendment to this Agreement.

B.4 Method of Adjustments

B.4.1 General

Pursuant to Section B.3, the Contractor may request an adjustment to the maximum rates according to the method described below and the formulas shown in Appendix B.4.4 and B.4.6, subject to review and approval of City. All future adjustments are to be effective July 1.

B.4.2 Cost Components for Rate Adjustment Indices

The approved rates consist of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section B.4.5 for detailed rate adjustment procedures for the Compactor Roll-Off rate and Section B.4.3 for all other rates.

Cost Category	Initial Weightings		Rate Adjustment Factor
	Cart/Bin	Roll-Off	
Labor	28.9%	59.6%	Change in the highest level rate for the "Driver A/B" Classification to be in effect as of the date the new rates go into effect (July 1st) under the Agreement between local haulers and Package and General Utility Drivers Local Union 396,
Fuel	9.9%	26.9%	Producer Price Index WPU 0531, Fuels and related products and power, natural gas
Equipment	11.9%	0%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Waste-To-Energy	11.2%	N/A	Actual change in waste-to-energy facility gate fee per ton
Disposal/ Green Waste and Organics Processing	31.6%	N/A	Consumer Price Index for All Urban Consumers (CUURA421SA0), Los Angeles-Riverside-Orange County, CA, all items, capped at 5% (increases over 5% to roll to subsequent years)
All Other	6.5%	13.5%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Total	100%	100%	

(1) Example calculation:

Labor Contract Rate Adjustment Date	10/01/2010	10/01/2011
Hourly Rate (hypothetical rates)	\$20.00	\$20.80
Collection Contract Rate Adjustment Date	n/a	7/01/2012
Change to Labor Component	n/a	4.0%

If a labor contract terminates and a subsequent labor contract has not been executed prior to the rate adjustment calculation, the percentage change in the labor cost component used in the

prior year's adjustment calculation will be used. In the event that the estimated labor component change is higher or lower than the actual change after a new labor contract is executed, no correction to compensation adjustment shall be provided for that year

B.4.3 Rate Adjustment Steps

All rates, including Cart, Bin and extra services rates, will be adjusted using the same methodology and cost component weightings, with the exclusion of compactor Roll-Off Box service and Roll-Off Box disposal rate and Recyclable Collection fee from Multi-Family Bin Customers. See Section B.4.4 for an example calculation based upon the steps described below.

Step One - Calculate the percentage increase or decrease in each index listed in Section B.4.2. The increase or decrease in the published indices for fuel, equipment, and all other (CPI Less Food and Energy) will be for the change in the average annual published index between the calendar year ended the October prior to the Rate Year anniversary date and prior calendar year. (See B.4.7 Example Calculation of Average Annual Index)

Step Two - The first rate adjustment cost components as a percentage of total costs are provided in Section B.4.2 above, with subsequent components calculated in Step Four of the rate adjustment. For Step Two of each subsequent rate adjustment, use the cost components recalculated in Step Four during the previous rate adjustment.

Multiply the percentage changes for each rate adjustment component by that component's weighting and add these resulting percentages together to get the total weighted change to the rates.

Step Three - Multiply the total weighted percent change from Step Two by the existing Customer rates to calculate the increase or decrease to the maximum rates. Add the rate increase or decrease to the existing rates to derive the newly adjusted rates.

Step Four - Recalculate weightings for the following year based upon these changes.

Note: The per unit fee for Recyclables Collection from Multi-Family units will adjust solely per the change in CPI less food and energy.

B.4.4 Example Cart and Bin Rate Adjustment Formula

Step One: Calculate percentage change in indices

Row	Adjustment Factor	Index	A	B	C
			Old Index Value	New Index Value	Percent Change In Index ((Column B/ Column A) -1)
1	Labor	(1)	\$ 18.10	\$ 18.65	3.0%
2	Fuel	(2)	216.9	235.5	8.6%
3	Equipment	(3)	119.2	130.0	9.1%
4	Transformation	(4)	\$ 45.00	\$ 48.00	6.7%
5	Disposal/GW	(5)	225.008	223.219	-0.8% (8)
6	All Other	(6)	215.572	219.235	1.7%

Step Two: Determine components

Row	Adjustment Factor	Index	D	E	F
			Cost Component Weighted as a % of Component Total (7)	Percent Change In Index (from Column C)	Total Weighted Change
7	Labor	(1)	28.9%	3.0%	0.9%
8	Fuel	(2)	9.9%	8.6%	0.9%
9	Equipment	(3)	11.9%	9.1%	1.1%
10	Transformation	(4)	11.2%	6.7%	0.8%
11	Disposal/GW	(5)	31.6%	-0.8%	-0.3%
12	All Other	(6)	6.5%	1.7%	0.1%
13	Total		100.0%		3.5%

Step Three: Apply percentage change to rates

Row	Rate Category	G	H	I	J
		Existing Customer Rate	Total Weighted Percentage Change (Row 13, Column F)	Rate Increase or Decrease (Column G x Column H)	Adjusted Rate (Column G + Column I)
14	Residential Service	\$ 10.77	3.5%	\$ 0.38	\$ 11.15
15	Push-Out/Push Back	\$ 4.00	3.5%	\$ 0.14	\$ 4.14
16	MF 3 Yd Bin, 1x week	\$ 53.30	3.5%	\$ 1.87	\$ 55.17
17	Com 3 Yd Bin, 1x week	\$ 60.76	3.5%	\$ 2.13	\$ 62.89
18	3 Yd Temporary Bin	\$ 85.00	3.5%	\$ 2.98	\$ 87.98
19	Extra Empty 3 Yd Bin	\$ 52.80	3.5%	\$ 1.85	\$ 54.65

Step Four: Re-weight cost components

Row	Adjustment Factor	Index	K	L	M	N	O
			Cost Component Weighting (Column D)	Percent Change in Index (Column E)	Change in Cost Component Weightings (Column K x Column L)	Adjusted Cost Component Weighting (Column K + Column M)	Cost Components Reweighted to Equal 100%
20	Labor	(1)	28.9%	3.0%	0.9%	29.8%	28.8%
21	Fuel	(2)	9.9%	8.6%	0.9%	10.8%	10.4%
22	Equipment	(3)	11.9%	9.1%	1.1%	13.0%	12.6%
23	Transformation	(4)	11.2%	6.7%	0.8%	12.0%	11.6%
24	Disposal/GW	(5)	31.6%	-0.8%	-0.3%	31.3%	30.2%
25	All Other	(6)	6.5%	1.7%	0.1%	6.6%	6.4%
26	Total		100.0%			103.5%	100.0%

(1) Driver A/B rate from Agreement between local haulers and Package and General Utility Drivers Local Union 396, International Brotherhood of Teamsters.

(2) Producer Price Index WPU 0531, Fuels and related products and power, natural gas.

(3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.

(4) Rate at the approved Waste-to-Energy facility.

(5) Consumer Price Index for All Urban Consumers (CUURA42ISA0), Los Angeles-Riverside-Orange County, CA, all items, capped at 5% (increase over 5% to be rolled to subsequent years).

(6) Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average - average annual change.

(7) Based on Proposal. After the first rate adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

(8) No greater than 5%.

B.4.5 Roll-Off Box Rate Adjustment Method

The Compactor Roll-Off Box rate consists of two components; a) the pull rate, or service component, and b) the disposal/processing component. See Section B.4.6 for an example calculation based upon the steps described below.

Step One – Calculate the percentage increase or decrease in each index listed in Section B.4.2. The increase or decrease in the published indices for fuel, equipment and all other (CPI Less Food and Energy) will be for the change in the average annual published index between the calendar year ended the October prior to the Rate Year anniversary date and prior calendar year. (See B.4.7 Example Calculation of Average Annual Index)

Step Two – The first rate adjustment cost components as a percentage of total costs are provided in Section B.4.2 above, with subsequent components calculated in Step Four of the rate adjustment. For Step Two of each subsequent rate adjustment, use the cost components recalculated in Step Four during the previous rate adjustment.

Multiply the percentage changes for each rate adjustment component, as determined in Step One, by that component's weighting as a percentage of the pull rate component.

It is not necessary to determine a weighting for Disposal, as this component is separately adjusted by a single index and need not be weighted.

Step Three – Multiply the weighted percent change for these service components from Step Two by the existing maximum pull rates to determine the increase or decrease in maximum pull rates. Then add the change in rates to the existing maximum pull rates to determine the new maximum pull rates. Multiply the percentage change in the Disposal cost index by the existing maximum disposal cost per ton. Then add to the existing maximum Disposal rate to determine the new maximum Disposal rate.

Step Four – Adjust the cost components as a percentage of the service component by the change in indices as the percentage changes were applied in Step Two. Recalculate the weighting of the service cost component percentages to equal 100% for use in the next rate adjustment calculation.

B.4.6 Example Compactor Roll-Off Rate Adjustment Formula

Row	Adjustment Factor	Index	A	B	C
			Old Index Value	New Index Value	Percent Change In Index ((Column B/ Column A) -1)
1	Service Component (Pull Rate)				
2	Labor	(1)	18.10	18.65	3.0%
3	Fuel	(2)	216.9	235.5	8.6%
4	Equipment	(3)	119.2	130.0	9.1%
5	All Other	(4)	215.572	219.235	1.7%
6	Disposal	(5)	225.008	223.219	-0.8% (7)

Step Two: Determine components

Row	Adjustment Factor	Index	D	E	F
			Cost Factor Category Weighted as a % of Component Total (6)	Percent Change In Index (from Step One, Column C)	Total Weighted Change
7	Service Component (Pull Rate)				
8	Labor	(1)	59.6%	3.0%	1.8%
9	Fuel	(2)	26.9%	8.6%	2.3%
10	Equipment	(3)	0.0%	9.1%	0.0%
11	All Other	(4)	13.5%	1.7%	0.2%
12	Service Component Total		100.0%	n/a	4.3%
13	Disposal	(5)	100.0%	-0.8%	-0.8%

Step Three: Apply percentage change to rates

Row	Rate Category	G	H	I	J
		Current Customer Rate	Total Weighted Percentage Change (from Column F)	Rate Increase or Decrease (Column G x Column H)	Adjusted Rate (Column G + Column I)
14	Pier Compactor Pull Rate	\$ 142.50	4.3%	\$ 6.13	\$ 148.63
15	Per Ton Disposal Rate	\$ 41.00	-0.8%	\$ (0.33)	\$ 40.67

Step Four: Re-weight service component cost components

Row	Adjustment Factor	Index	K	L	M	N	O
			Cost Component (Column D)	Percent Change in Index (Column E)	Change in Cost Component Weightings (Column K x Column L)	Adjusted Cost Component Weighting (Column K + Column M)	Cost Components Reweighted to Equal 100%
16	Labor	(1)	59.6%	1.8%	1.1%	60.7%	59.7%
17	Fuel	(2)	26.9%	2.3%	0.6%	27.5%	27.0%
18	Equipment	(3)	0.0%	0.0%	0.0%	0.0%	0.0%
19	All Other	(4)	13.5%	0.2%	0.0%	13.5%	13.3%
20	Total		100.0%			101.7%	100.0%

- (1) Driver A/B rate from Agreement between local haulers and Package and General Utility Drivers Local Union 396, International Brotherhood of Teamsters.
- (2) Producer Price Index WPU 0531, Fuels and related products and power, natural gas.
- (3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.
- (4) Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average - average annual change.
- (5) Consumer Price Index for All Urban Consumers (CUURA421SA0), Los Angeles-Riverside-Orange County, CA, all items, capped at 5% (increase over 5% to be rolled to subsequent years).
- (6) Based on Proposal. After the first rate adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.
- (7) No greater than 5%.

B.4.7 Example Calculation of Average Annual Index

Consumer Price Index - All Urban Consumers, U.S. City Average

All items less food and energy, CUUR0000SA0L1E

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2007											212.435	212.356	
2008	213.138	213.866	214.866	215.059	215.18	215.553	216.045	216.476	216.862	217.023			214.905

2008											216.69	216.1	
2009	216.719	217.685	218.639	219.143	219.128	219.283	219.35	219.596	220.137	220.731			218.600

Average Change: 1.7%

B.5 Extraordinary Adjustments

Contractor may request an adjustment to maximum rates at reasonable times other than that allowed under Section B.3 in the event of extraordinary changes in the cost of providing service under this Agreement. Such changes shall not include changes in tipping fees for Recyclable Material processing costs, changes in the market value of Recyclables from the values assumed in Contractor's Proposal, inaccurate estimates by the Contractor of its proposed cost of operations, unionization of Contractor's work force, or change in wage rates or employee benefits. Contractor may request an extraordinary adjustment based upon changes in a direct per ton surcharge assessed at the Disposal Site by federal, state or local regulatory agencies after the Effective Date. Extraordinary rate adjustments shall only be effective after approval by City Council and may not be applied retroactively.

For each request for an adjustment to the maximum rates that Contractor may charge Customers brought pursuant to this section Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate. Contractor shall also submit a schedule showing how its total costs and total revenues have changed over the past three years for the services provided under this Agreement.

City may request a copy of the Contractor's annual financial statements in connection with the City's review of Contractor's rate adjustment request. City shall review the Contractor's request and, in City's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. City may consider increases or decreases in the Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

B.6 Puente Hills Closure Extraordinary Rate Adjustment for Green Waste

Contractor delivers Residential Cart Green Waste to the Puente Hills Landfill for use as alternative daily cover. This landfill is scheduled to close during this Agreement term. Contractor shall be entitled to a one-time 6.1% increase to the monthly residential cart service rate, effective at the next regularly scheduled rate adjustment after Puente Hills Landfill closes and ceases to accept Green Waste, provided Contractor delivers the Green Waste for composting and full diversion credit. This shall be considered to entirely compensate Contractor for any and all additional costs related to the processing and transport of Green Waste. This is the only exception permitted to the Disposal/Green Waste rate adjustment index in Section B.4.2 above.

If City implements services and rates under Appendix I, this extraordinary rate adjustment is not applicable, as Green Waste is to be composted, not sent to Puente Hills as alternative daily cover.

APPENDIX C

REQUIRED INSURANCE

Without limiting Contractor's indemnification obligations under this Agreement, Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

(A) Minimum Scope of Insurance

Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

Workers' Compensation insurance as required by the State of California.

Employer's Liability Insurance.

(B) Minimum Limits of Insurance

Contractor shall maintain limits no less than:

General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall apply separately to this project.

Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

(C) Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City, which approval shall not be unreasonably withheld. If, in the reasonable opinion of the City, Contractor does not have sufficient financial resources to protect the City from exposure with respect to any deductibles or self-insured retentions. At the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers or (2) the Contractor shall provide a financial

guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(D) Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(E) Additional Insured Endorsement

General Liability: The City, its officers, elected and appointed officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of work performed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy.

Automobile Liability: The City, its officers, elected and appointed officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor.

For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, elected and appointed officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Each insurance policy shall be endorsed to state that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

Each insurance policy shall be in effect prior to awarding the contract and each insurance policy or a successor policy shall be in effect for the duration of the project. The maintenance of proper insurance coverage is a material element of the contract and failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract on the Contractor's part.

(F) Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII and which are authorized to transact insurance business in the State of California by the Department of Insurance.

(G) Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on the City authorized forms provided with the contract specifications. Standard ISO forms which shall be subject to City approval and amended to conform to the City's requirements may be acceptable in lieu of City authorized forms. All certificates and endorsements are to be received and approved by the City before the contract is awarded. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

(H) Subcontractors

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(I) Risk Management

Contractor acknowledges that insurance underwriting standards and practices are subject to change, and the City reserves the right to make changes to these provisions in the reasonable discretion of its Risk Manager.

Appendix D

Operation of Redondo Beach HHW/E-Waste Collection Events

As part of its obligations under the Agreement, the Contractor will provide two (2) Household Hazardous Waste (HHW) and Electronic Waste (E-waste) collection events per year. This appendix details the operational requirements of the events.

D.1 General

- 1.1 Contractor shall utilize only those treatment, storage, disposal (TSD) facilities approved by the City. The Contractor may be required to submit permits, proof of insurance and/or environmental audit on any disposal facility. The City reserves the right to reject any disposal facility at any time.
- 1.2 Contractor must provide copies of all licenses and permits relevant to the operation of HHW/E-Waste collection services. Contractor warrants that all such licenses and permits will be in effect during the term of this Agreement. Contractor will notify the City prior to the next scheduled collection event, if feasible, of the cancellation or expiration of any relevant license or other document.
- 1.3 Contractor shall perform this Agreement as an independent contractor and shall have and maintain complete control over all its employees and operations. Contractor and its employees shall not represent, act, or purport to act for or be deemed the agent, representative or employee of the City.
- 1.4 Contractor shall accept HHW from all City of Redondo Beach residents who may be requested to show a form of id, including a drivers license, identification card, or utility bill.

D.2 For Each Scheduled Collection Event

- 2.1 City shall notify Contractor at least 60 working days in advance of the date of a Scheduled Collection Event. Contractor shall begin the services and shall take steps reasonably necessary to assure readiness for and successful completion of each Scheduled Collection Event.
- 2.2 Contractor shall designate a HHW Collection Manager sixty (60) days prior to the first Scheduled Collection Event.
- 2.3 The City will provide any and all publicity for each Scheduled Collection Event and Contractor shall not publicize the event.

- 2.4 Contractor shall identify event site. Once Contractor has identified a collection site for a Scheduled Collection Event, Contractor shall request City's approval of the site, and Contractor's HHW Collection Manager will conduct a site walk with a representative of the City.
- 2.5 The City will obtain a temporary CAH EPA ID number for each site selected and provide it to Contractor no later than 60 days prior to the Scheduled Collection Event.
- 2.6 The City will prepare and submit a Permit by Rule (PBR) Notification (California Department of Toxic Substances Control (DTSC) Form 8464) in accordance with regulations as described in Title 22, Division 4.5 of the California Code of Regulations. Contractor shall be responsible for obtaining any local permits, if necessary, and notifying local fire and law enforcement agencies.
- 2.7 Within sixty (60) days of the Scheduled Collection Event Contractor shall provide, for City review and approval a generic Operation Plan that describes the program operations; equipment and materials to be used; personnel plan; health and safety plan; hazardous waste handling plan; hazardous waste management plan; security; emergency response plan; list of applicable permits. The City reserves the right at any time to require further measures be included.
- 2.8 Contractor shall provide site specific addenda to accompany the generic Operation Plan for each Scheduled Collection Event which will detail all unique pertinent health and safety information as it relates to the physical characteristics of each individual site. Such addenda will include a physical description of each collection site, evacuation routes, and local hospital and other emergency facilities in the vicinity. Such information must be provided to the City thirty (30) days prior to each Scheduled Collection Event.
- 2.9 Contractor is responsible for providing all necessary staff and equipment for event.
- 2.10 Unless otherwise approved by City, each collection site shall be set up one day prior to the actual date of the Scheduled Collection Event. Contractor shall coordinate with site owner to determine the most convenient time for site owner to permit Contractor to set up the event as well as gaining access to the site by 6:00 AM the day of the Scheduled Collection Event.
- 2.11 Contractor shall manage each collection site in accordance with the PBR regulations (Title 22, Division 4.5 of the California Code of Regulation) and any local agency requirements should they exist. The collection site shall be subject to the inspection, and approval of the local Certified Unified Program Agency (CUPA) and/or the DTSC.

- 2.12 Hours of Operation - Each Event will be one day in duration. Contractor shall be on-site by 6:00 a.m. Contractor shall operate at least from 9:00 a.m. to 3:00 p.m. If deemed necessary by the City, Contractor will be prepared to continue operations until 4:00 p.m.
- 2.13 Security - Contractor shall arrange to have the site secured with a security guard for any equipment that must be left on site overnight either before the collection or after the collection.
- 2.14 Staff Safety Meeting - Before each Scheduled Collection Event, the HHW Collection Manager shall conduct a general site safety meeting for all workers.
- 2.15 Contractor shall provide personnel to manage traffic on site, and to disperse informational materials/surveys to participants under the direction of the City. Contractor must provide for each traffic worker a fluorescent safety vest, and rain protection gear should it be necessitated by the weather. Prior to each Scheduled Collection Event, the City will notify Contractor of the number of traffic workers needed and present a traffic plan detailing the position of each traffic worker with a number as the positions relate to the traffic plan and the site in question. The HHW Collection Manager will conduct a traffic safety meeting (over and above the general site safety meeting) at 7:30 am the day of the Scheduled Collection Event. At that meeting each traffic worker will be assigned a number corresponding to the traffic plan presented to Contractor by the City.
- 2.16 Contractor shall provide all workers including personnel from the City and personnel from the local law enforcement agency, fire department or CUPA with lunch, snacks, and bottled water throughout the day to ensure continuity of services during the hours of operation. Contractor shall be responsible for coordinating lunch, and general breaks for all traffic and hazardous waste workers to ensure continuity of services during the hours of operation. Contractor shall also furnish an adequate supply of folding tables and chairs to allow workers to sit during lunch breaks.
- 2.17 Contractor shall supply no fewer than 200 traffic safety delineators (36 inch high) and 400 traffic safety cones (18 inch maximum) and 25 Type II Barricades (3 feet high by 2 feet wide) to City's personnel at the beginning of each collection for the purposes of setting up a network of traffic queuing lanes. Such equipment must be on site and available to the City no later than 6:00 am the day of each Scheduled Collection Event. City personnel will be responsible for coordinating the development of such lanes. Contractor may be asked to help facilitate this effort.
- 2.18 Promotional literature for each Scheduled Collection Event shall discourage the transportation to the site of explosives, ammunition, infectious/biological materials and radioactive materials. Should such materials be transported to the site, Contractor shall either manage the

material or arrange for an approved and appropriate subcontractor to manage the material. In any event, Contractor will be responsible to remove all waste material from the collection site the day of the Scheduled Collection Event.

- 2.19 Contractor shall categorize, package, label, manifest, transport, and otherwise manage all HHW and E-Waste collected. All waste materials shall be packaged in accordance with Department of Transportation (DOT) standards. Only used motor oil and antifreeze will be permitted to be bulked on-site.
- 2.20 Contractor shall provide sufficient Containers, packing materials and other supplies as necessary to properly Collect and dispose of all material delivered by Residential Customers, including both Single and Multi-Family residents.

D.3 After Each Scheduled Collection Event

- 3.1 Contractor shall prepare all manifests, profile sheets and bills of lading naming the City as the generator.
- 3.2 All HHW, E-Waste and trash collected shall be transported off the collection site the day of the Scheduled Collection Event. All transportation of collected materials shall be secured prior to the Scheduled Collection Event.
- 3.3 Contractor shall transport all waste collected to either a licensed treatment storage and disposal (TSD) facility or an interim storage facility in accordance with the California Health and Safety Code for temporary storage of hazardous waste and pursuant to the California Administrative Code, Division 4.5, Chapter 13.
- 3.4 Any paint and/or chemical contamination or other damage to any site and/or personal property resulting from the operation of any Scheduled Collection Event shall be the sole financial responsibility of Contractor to clean, repair, or replace. Contractor shall pick-up all trash, sweep the area, and generally return the site to equivalent or better condition than existed prior to the Scheduled Collection Event.
- 3.5 All equipment must be removed the evening of the Scheduled Collection Event The only exception to this requirement is for leased equipment such as fork lifts or portable restrooms that are more typically picked up by a third party vendor on the Monday following the event, and only if previous permission has been secured from the property site owner.
- 3.6 All paint collected will be segregated and consolidated for reuse and/or recycle. Any bulking of paint will take place at a licensed TSD facility, or certified recycle facility and not at the collection site. All useable latex paint will be recycled in a manner that allows the paint to be

re-used for graffiti control or some other similar program. Contractor shall make such recycled paint available to the City or other groups approved by the City at no cost in either 5 gallon buckets or 55 gallon drums depending upon the needs of the user of the product. Any recycled latex paint destruction or diversion to other recycling methods must first be approved by the City.

D.4 Billings to City and Payments to Contractor

- 4.1 Within one week of the close of each Scheduled Collection Event, Contractor shall provide an accounting of all materials collected.
- 4.2 Contractor shall be compensated within 30 days after receipt of a copy of the manifest detailing all materials Collected, and documentation of their delivery to a properly licensed Hazardous Waste processing facility. Compensation shall be paid in accordance with the Approved Rate Schedule in Appendix E.
- 4.3 The City shall be responsible for all new taxes, tariffs, fees, surcharges and other charges imposed by any governmental agency after the execution date of this Agreement and levied specifically upon the transportation, treatment, storage, incineration or disposal of wastes upon 30 days notice to the City of such change and evidence of payment by Contractor.
- 4.4 Should Contractor fail to complete the work within the time limitations and manner described, the City may withhold from the final payment due contractor, the actual damages suffered by the City and/or the owner of the site. Such damages will include, but not be limited to salaries paid to City personnel needed to stay on site, and any expenses or damages that may be incurred including loss of revenue that may accrue as a result of temporary loss of the use of owner's property.

APPENDIX E

APPROVED RATE SCHEDULE

Initial Maximum Contractor Rates For
July 1, 2011 to June 30, 2012

RESIDENTIAL CART SERVICE RATE SCHEDULE

July 1, 2011 to June 30, 2012

Residential Cart Service	Rate*
Residential Cart Service Rate - unlimited refuse, recycling, and green waste	\$10.77 per month
Push-Out/Push-Back Service	\$4.00 per month
Additional Cart Exchanges - above once every six months	\$20.00 per exchange
Optional HHW Door-To-Door Collection Program (if requested by City) - to be collected in addition to residential cart service rate for residential cart customers and to the per unit recycling collection fee for multi-family bin customers	\$0.35 per month

* Excludes HHW, Administrative, Recycling and AB 939 fees. Includes Contracting Fee, Recycle Ranger Funding, Recyclables Rebate, Solid Waste Vehicle Road Impact Reimbursement, Audit costs and all other costs included under the Agreement (see Sections 12.4.1 and 7.2.6).

RESIDENTIAL BIN CUSTOMERS

July 1, 2011 to June 30, 2012

(Rates* shall be for service monthly)

BIN SIZE	1X WK	2X WK	3X WK	4X WK	5X WK	6X WK	7X WK	Extra Pickup
1 Cubic Yard	\$39.26	\$76.57	\$113.88	\$151.18	\$188.49	\$225.80	\$263.11	\$52.80
1.5 Cubic Yard	\$42.77	\$83.41	\$124.05	\$164.69	\$205.33	\$245.97	\$286.61	\$52.80
2 Cubic Yard	\$46.28	\$90.25	\$134.23	\$178.20	\$222.18	\$266.15	\$310.12	\$52.80
3 Cubic Yard	\$53.30	\$103.93	\$154.56	\$205.19	\$255.82	\$306.46	\$357.09	\$52.80
4 Cubic Yard	\$60.32	\$117.63	\$174.93	\$232.24	\$289.54	\$346.85	\$404.16	\$52.80
6 Cubic Yard	\$74.35	\$144.99	\$215.63	\$286.27	\$356.91	\$427.55	\$498.19	\$52.80
3 Cubic Yard Compactor	\$91.14	\$178.63	\$266.13	\$353.62	\$441.12	\$528.61	\$616.11	\$109.28
4 Cubic Yard Compactor	\$103.14	\$201.14	\$299.13	\$397.13	\$495.12	\$593.12	\$691.11	\$109.28
Green Waste Cart	\$2.50							
Fee for Locking Lids	\$5.00	\$8.00	\$11.00	\$14.00	\$17.00	\$20.00	\$23.00	

Notes:

X means collection frequency per week

WK means week

* Excludes HHW, Administrative and AB 939 fees. Includes Contracting Fee, Recycle Ranger Funding, Recyclables Rebate, Solid Waste Vehicle Road Impact Reimbursement, Audit costs and all other costs included under this Agreement (see Sections 12.4.1 and 7.2.6).

\$1.74 per unit for Recyclable Collection from Multi-family Bin Customers (Required)

COMMERCIAL COLLECTION RATE SCHEDULE

July 1, 2011 to June 30, 2012

(Rates* shall be for service monthly)

BIN SIZE	1X WK	2X WK	3X WK	4X WK	5X WK	6X WK	7X WK	Extra Pickup
Commercial Cart	\$36.77	\$79.30	\$121.83	\$164.36	\$206.89	\$249.42	\$291.95	\$52.80
1 Cubic Yard	\$44.76	\$87.29	\$129.82	\$172.35	\$214.88	\$257.41	\$299.94	\$52.80
1.5 Cubic Yard	\$48.76	\$95.09	\$141.42	\$187.75	\$234.08	\$280.41	\$326.74	\$52.80
2 Cubic Yard	\$52.76	\$102.89	\$153.02	\$203.15	\$253.28	\$303.41	\$353.54	\$52.80
3 Cubic Yard	\$60.76	\$118.48	\$176.20	\$233.92	\$291.64	\$349.36	\$407.08	\$52.80
4 Cubic Yard	\$68.76	\$134.09	\$199.42	\$264.75	\$330.08	\$395.41	\$460.74	\$52.80
6 Cubic Yard	\$84.76	\$165.29	\$245.82	\$326.35	\$406.88	\$487.41	\$567.94	\$52.80
3 Cubic Yard Compactor	\$91.14	\$178.63	\$266.13	\$353.62	\$441.12	\$528.61	\$616.11	\$109.28
4 Cubic Yard Compactor	\$103.14	\$201.14	\$299.13	\$397.13	\$495.12	\$593.12	\$691.11	\$109.28
Green Waste Cart	\$2.50							
Fee for Locking Lids	\$5.00	\$8.00	\$11.00	\$14.00	\$17.00	\$20.00	\$23.00	

Notes:

X means collection frequency per week

WK means week

* Excludes HHW, Administrative and AB 939 fees. Includes Contracting Fee, Recycle Ranger Funding, Recyclables Rebate, Solid Waste Vehicle Road Impact Reimbursement, Audit costs and all other costs included under this Agreement (see Sections 12.4.1 and 7.2.6).

ADDITIONAL SERVICES

July 1, 2011 to June 30, 2012

Additional Bin and Other Fees	Rate*
3-Yard Temporary Bin (includes delivery, seven day rental and disposal)	\$85.00 per dump
3-Yard Temporary Bin - rental per day beyond seven days)	\$8.00 per day
Compactor Roll-Off Box at Pier:	
- per pull	\$142.50 per dump
- per ton	\$41.00 per ton
Commercial Bulky Waste Pickup	\$25.00 per item
Return Trip Charge	\$50.00 per trip
Bin Re-delivery Fee (if bins are pulled for non-payment)	\$45.00 per bin
Bin Cleaning (over once per year)	\$45.00 per cleaning
Bin Overage Cleanup (following one written warning)	\$30.00
HHW Event (per Appendix D of Agreement)	\$35,000/event
Commercial HHW Collection	\$25.00 per item
Emergency Service Rates - one crew and one collection truck	\$85.00/hour

* Excludes HHW, Administrative and AB 939 fees. Includes Contracting Fee, Recycle Ranger Funding, Recyclables Rebate, Solid Waste Vehicle Road Impact Reimbursement, Audit costs and all other costs included under this Agreement (see Sections 12.4.1 and 7.2.6).

OPTIONAL SERVICE

Optional Service	Rate
Processing 100% of residential bin waste to remove recyclables prior to landfilling:	20% increase in monthly bin rates(1)

(1) Applies to residential bin refuse collection rate only. Does not apply to multi-family per unit recyclables collection rate. Is not applicable if City instructs Contractor to implement Enhanced Diversion Programs under Exhibit I.

Appendix F

Form of Performance Bond

1. The Company and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the City for the performance of the operation Contract, which is incorporated herein by reference.
2. If the Company timely and completely performs the operation Contract, the Surety and the Company shall have no obligation under this Bond except to participate in conferences as provided in Subparagraph 3. 1.
3. If there is no City Default, the Surety's obligation under this Bond shall arise after:
 - 3.1 The City has notified the Company and the Surety at its address described in Paragraph 10 below that the City is considering declaring a Company Default and requested a conference with the Company and the Surety to discuss the performance of the Operation Contract; and
 - 3.2. The City has declared a Company Default and sent a notice to the Company and Surety formally electing to terminate the Company's right to complete the performance of the work under the Operation Contract: and
 - 3.3. The City has agreed (subject to Paragraph 5 hereof) to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Operation Contract or to a contractor selected to perform the remaining work under the Operation Contract in accordance with the terms of the Operation Contract with the City.
4. When the City has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1. Arrange for the Company, with consent of the City, to perform and complete the Operation Contract; or
 - 4.2. Undertake to perform and complete the Operation Contract itself, through its agents or through qualified independent contractors; or
 - 4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the City for a contract for performance and completion of the Operation Contract, arrange for a contract to

be prepared for execution by the City and the contractor selected with the City's concurrence to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Operation Contract, and pay to the City the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the City resulting from the Company's default; or

4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

(1) After investigation, determine the amount for which it may be liable to the City and, as soon as practicable after the amount is determined, tender payment therefore to the City;

or

(2) Deny liability in whole or in part and notify the City citing reasons thereof.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness (and in any event within the 45-day period commencing on the receipt by the Surety of the notice referred to in subparagraph 3.2 hereof), the Surety shall be deemed to be in default on this Bond and without further notice, the City shall be entitled to enforce any remedy available to the City, including without limitation arranging for the work under the Operation Contract to be completed by a qualified contractor or contractors selected by the City and seeking compensatory damages from the Surety. If the Surety proceeds as provided in Subparagraph 4.4, and the City refuses the payment tendered or the Surety has denied liability in whole or in part without further notice the City shall be entitled to enforce any remedy available to the City, including without limitation arranging for the work under the Operation Contract to be completed by a qualified contractor or contractors selected by the City and seeking compensatory damages from the Surety.

6. After the City has terminated the Company's right to complete the Operation Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2., or 4.3 above, then the responsibilities of the Surety to the City shall not be greater than those of the Company under the Operation Contract and the responsibilities of the City to the Surety shall not be greater than those of the City under the Operation Contract. To the limit of the amount of this Bond, but Subject to Commitment by

the City of the Balance of the Contract Price to mitigation of costs and damages on the Operation Contract, the Surety is obligated without duplication for:

- 6.1 The responsibilities of the Company for the collection of Franchise Materials in accordance with the Operation Contract;
 - 6.2. Additional legal, design, professional and delay costs resulting from the Company Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3 Liquidated damages, or if no liquidated damages are specified in the Operation Contract, actual damages caused by delayed performance or non-performance of the Company.
7. The Surety shall not be liable to the City or others for obligations of the Company that are unrelated to the Operation Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated Obligations. No right of action shall accrue on this Bond to any person or entity other than the City or its heirs, executors, administrators or successors.
 8. The Surety hereby waives notice of any change, including changes of time, to the Operation Contract or to related subcontracts, purchase orders and other obligations.
 9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Company Default or within two years after the Company ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
 10. Notice to the Surety, the City or the Company shall be mailed or delivered to the address shown on the signature page.
 11. When this Bond has been furnished to Comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with

said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein.

12. DEFINITIONS

- 12.1. Balance of the Contract price: The total amount due and payable by the City to the Company under the Operation Contract after all proper adjustments have been made, including allowance to the Company of any amounts received or to be received by the City in settlement of insurance or other claims for damages to which the Company is entitled, reduced by all valid and proper payments made to or on behalf of the Company under the Operation Contract.
- 12.2. Operation Contract: The Solid Waste Handling Services Agreement between the company and the City, dated _____.
- 12.3. Company Default: Failure of the Company, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Operation Contract, including, without.
- 12.4. City Default: Failure of the City, which has neither been remedied nor waived, to pay the Company as required by the Operation Contract or to perform and complete or comply with the other terms thereof, which failure must be sufficiently serious to justify a termination of the Operation Contract, including, without limitation, an Event of Default of the City, as defined in the Operation Agreement.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

This Bond has been entered into to bind die Surety and the Company, as principal, unto Redondo Beach, its successors and assigns, in the penal sum of Two Hundred and Fifty Thousand (\$250,000), lawful money of the United States of America, for the payment of which said sum of money well and truly to be made, the Surety and the Company bind themselves, their successors and assigns in each sum "jointly and severally" as well as 'severally only" for the purpose of allowing a joint action or actions against any or all of them and for all other purposes, each binds itself, its successors and assigns, jointly and severally to the City, its successors and assigns for the payment of such sums as to which the Company or the Surety may become obligated to pay under this Performance Bond.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

COMPANY AS PRINCIPAL

SURETY

Name:

Name:

(Corporate Seal)

(Corporate Seal)

Signature_____

Signature_____

Name and Title:

Name and Title:

Address:

Address:

Appendix G
Appendix Deleted

Appendix H

Transition Plan

This section details the requirements of the City and Contractor in transitioning between service providers and/or the implementation of new services for Redondo Beach customers. Contractor shall also meet the terms and schedules proposed in Section 7 of Contactor's proposal to the City dated May 20, 2010.

H.1 Advanced Route Driving

All drivers will have driven their assigned routes at least six weeks prior July 1, 2011. Drivers on Bin and/or Commercial Cart routes will have stopped at each location to view pickup location and identify any problem stops or issues, and to make all needed adjustments prior to July 1, 2011. Contractor shall provide City with written verification that the routes had been run, notification of any issues discovered, and steps taken to resolve such issues at least 20 days prior to July 1, 2011.

H.2 Multi-Family and Commercial Premises Customer Accounts and Billing

Contractor shall be responsible for obtaining accurate customer account information prior to the implementation of service, and for maintaining accurate customer account information. The City shall assist the Contractor, where possible, in obtaining and maintaining this information.

Contractor shall obtain and input customer account information into its database at least 30 days prior to the implementation of service. Customer account information shall be provided in summary form on a per account basis to the City within 30 days after implementation of collection service. Customer account information shall be made available to the City on request and may be used by the City, as it deems necessary. The following account information shall be available to the City:

- a. Customer name
- b. Service address
- c. Billing address
- d. Size of bin

- e. Frequency of collection
- f. Type of service (solid waste bin collection, 4-unit wheeled carts, recycling, etc.)
- g. Cost of service, itemized for each service and totaled
- h. Any additional services and their costs (locking lids)
- i. Number of units at property (multi-family accounts only)

This schedule may be changed as agreed to by City and Contractor.

H.3 Staffing Levels

Agreement requires a dedicated route supervisor for the term, and a customer service representative stationed at the City for the transition period per Section 10.1.3 of this Agreement. Agreement requires sufficient staff to provide required service, even if such staff exceeds Contractor's proposal assumptions (Section 6.16.H). Contractor will assign sufficient additional staff, over and above staffing otherwise required under this Agreement, if necessary to facilitate a smooth transition.

H.4 Containers

Under the terms of the present contract, the City owns all of the refuse, recycling and green waste wheeled carts, and Multi-Family and Commercial Bins. Contractor shall provide and retain ownership of Roll-Off Boxes at City Facilities as needed, and City shall provide the compactor Roll-Off Box located at the Pier. Under the new contract this policy will continue.

Appendix I

Enhanced Diversion Programs

Contractor shall implement the following programs at the start of service under this Agreement in accordance with the following terms:

I.1 Residential Organics Program

Through the Green Waste Cart Collection program under Section 5.6.1, Contractor shall Collect in the Green Waste Cart, and divert from landfilling, Organics as defined in Section 1.63A.

I.2 Commercial Organics Program

Contractor, with City assistance, will identify all food service establishments. Contractor shall Collect Refuse from hotels, restaurants and all other food service establishments on a separate route and direct all Solid Waste Collected on this route for composting. Contractor shall distribute green-colored, 100% biodegradable bags at no additional cost to participating Customers for Customers to place food waste. These bags shall be placed in Customers' Refuse Collection Containers. Contractor shall recover these bags at its processing Facility and compost the contents. Company shall Collect participating Customers on a separate route. Contractor shall process the remainder of the Solid Waste Collected on the route to recover and compost additional organic material that was not placed in the bags. Participating Customers shall be charged no more than the comparable Refuse Collection rate for this service.

Contractor shall provide a list of Customers Collected on this organics route to the City upon request, and shall separately account on its monthly tonnage reports to the City for tonnage Collected on this route, including the tons Collected, diverted and Disposed. The recovery rate for this material, as measured on a monthly basis, shall be no less than 65% of the tons Collected on the route.

As Organics and other Refuse shall be co-Collected under this program, participation should require minimal effort on the part of the Customer. Contractor will meet with participating Customers and train staff to the extent necessary to increase the recovery rate. Participating Customers may be encouraged, but not required by Contractor, to source separate non-compostable Recyclables such as bottles and cans from Refuse.

I.3 Composting of Pier Compactor Roll-Off

Contractor shall deliver all Solid Waste Collected from the Pier Compactor per Section 5.15.7 for composting. Contractor shall divert a minimum of 65% of Pier Compactor Roll-off tonnage.

I.4 Mixed Waste Processing of All Residential Refuse

Contractor shall send all Refuse Collected in the City in Refuse Carts (including Single Family and Multi-Family Refuse Carts) for processing to recover Recyclables prior to landfilling. Contractor shall divert from landfilling a minimum of 8.5% of Solid Waste Collected from Residential Refuse Carts.

I.5 Processing of all Other Refuse

To recover Recyclables prior to landfilling, Contractor shall process all Refuse Collected from all Bin Customers (Multi-Family, Commercial, City and School), Refuse from City-sponsored events and all other Refuse not composted or otherwise processed, and divert from landfilling a minimum of 41% of the tonnage Collected.

I.6 Minimum Diversion Requirement

The minimum diversion requirement of 59% per Sections 5.5.6, 10.4.B.22, and 13.3.1.Q shall be increased to 75%.

I.7 Contractor Rates

Since the City Council approved Appendix I on January 4, 2011, the rate schedule in Appendix E shall be replaced with the following rate schedule.

**RESIDENTIAL CART SERVICE RATE SCHEDULE -
RATES WITH ENHANCED DIVERSION PROGRAM**

July 1, 2011 to June 30, 2012

Residential Cart Service	Rate*
Residential Cart Service Rate - unlimited refuse, recycling, and green waste	\$11.94 per month
Push-Out/Push-Back Service	\$4.00 per month
Additional Cart Exchanges - above once every six months	\$20.00 per exchange
Optional HHW Door-To-Door Collection Program (if requested by City) - to be collected in addition to residential cart service rate for residential cart customers and to the per unit recycling collection fee for multi-family bin customers	\$0.35 per month

* Excludes HHW, Administrative, Recycling and AB 939 fees. Includes Contracting Fee, Recycle Ranger Funding, Recyclables Rebate, Solid Waste Vehicle Road Impact Reimbursement, Audit costs and all other costs included under the Agreement (see Sections 12.4.1 and 7.2.6).

RESIDENTIAL BIN CUSTOMERS - RATES WITH ENHANCED DIVERSION PROGRAM

July 1, 2011 to June 30, 2012

(Rates* shall be for service monthly)

BIN SIZE	1X WK	2X WK	3X WK	4X WK	5X WK	6X WK	7X WK	Extra Pickup
1 Cubic Yard	\$46.32	\$90.36	\$134.39	\$169.48	\$211.31	\$253.13	\$294.96	\$52.80
1.5 Cubic Yard	\$47.95	\$93.51	\$139.07	\$184.63	\$230.19	\$275.75	\$321.31	\$52.80
2 Cubic Yard	\$54.62	\$106.51	\$158.41	\$208.54	\$254.34	\$300.12	\$347.66	\$52.80
3 Cubic Yard	\$62.90	\$122.66	\$182.40	\$235.29	\$286.78	\$340.26	\$405.58	\$52.80
4 Cubic Yard	\$71.18	\$138.80	\$201.37	\$257.62	\$320.61	\$379.54	\$446.25	\$52.80
6 Cubic Yard	\$87.75	\$171.11	\$241.74	\$314.07	\$372.98	\$444.94	\$511.69	\$52.80
3 Cubic Yard Compactor	\$102.18	\$200.25	\$298.35	\$396.42	\$494.52	\$592.60	\$690.70	\$109.28
4 Cubic Yard Compactor	\$115.63	\$225.49	\$335.34	\$445.20	\$555.06	\$664.92	\$774.77	\$109.28
Green Waste Cart	\$2.50							
Fee for Locking Lids	\$5.00	\$8.00	\$11.00	\$14.00	\$17.00	\$20.00	\$23.00	

Notes:

X means collection frequency per week

WK means week

* Excludes HHW, Administrative and AB 939 fees. Includes Contracting Fee, Recycle Ranger Funding, Recyclables Rebate, Solid Waste Vehicle Road Impact Reimbursement, Audit costs and all other costs included under this Agreement (see Sections 12.4.1 and 7.2.6).

\$1.74 per unit for Recyclable Collection from Multi-family Bin Customers (Required)

**COMMERCIAL COLLECTION RATE SCHEDULE -
RATES WITH ENHANCED DIVERSION PROGRAM**

July 1, 2011 to June 30, 2012

(Rates* shall be for service monthly)

BIN SIZE	1X WK	2X WK	3X WK	4X WK	5X WK	6X WK	7X WK	Extra Pickup
Commercial Cart	\$41.23	\$88.90	\$136.58	\$184.26	\$231.94	\$279.62	\$327.29	\$52.80
1 Cubic Yard	\$52.81	\$103.01	\$153.21	\$193.21	\$240.89	\$288.57	\$336.25	\$52.80
1.5 Cubic Yard	\$54.66	\$106.60	\$158.54	\$210.48	\$262.42	\$314.35	\$366.29	\$52.80
2 Cubic Yard	\$62.27	\$121.42	\$180.59	\$237.74	\$289.95	\$342.14	\$396.33	\$52.80
3 Cubic Yard	\$71.71	\$139.83	\$207.94	\$268.23	\$326.93	\$387.90	\$462.36	\$52.80
4 Cubic Yard	\$81.14	\$158.23	\$229.56	\$293.69	\$365.50	\$432.67	\$508.73	\$52.80
6 Cubic Yard	\$100.03	\$195.07	\$275.58	\$358.04	\$425.20	\$507.23	\$583.33	\$52.80
3 Cubic Yard Compactor	\$102.18	\$200.25	\$298.35	\$396.42	\$494.52	\$592.60	\$690.70	\$109.28
4 Cubic Yard Compactor	\$115.63	\$225.49	\$335.34	\$445.20	\$555.06	\$664.92	\$774.77	\$109.28
Green Waste Cart	\$2.50							
Fee for Locking Lids	\$5.00	\$8.00	\$11.00	\$14.00	\$17.00	\$20.00	\$23.00	

Notes:

X means collection frequency per week

WK means week

* Excludes HHW, Administrative and AB 939 fees. Includes Contracting Fee, Recycle Ranger Funding, Recyclables Rebate, Solid Waste Vehicle Road Impact Reimbursement, Audit costs and all other costs included under this Agreement (see Sections 12.4.1 and 7.1.6).

ADDITIONAL SERVICES - RATES WITH ENHANCED DIVERSION PROGRAM

July 1, 2011 to June 30, 2012

Additional Bin and Other Fees	Rate*
3-Yard Temporary Bin (includes delivery, seven day rental and disposal)	\$85.00 per dump
3-Yard Temporary Bin - rental per day beyond seven days)	\$8.00 per day
Compactor Roll-Off Box at Pier:	
- per pull	\$142.50 per dump
- per ton	\$56.00 per ton
Commercial Bulky Waste Pickup	\$25.00 per item
Return Trip Charge	\$50.00 per trip
Bin Re-delivery Fee (if bins are pulled for non-payment)	\$45.00 per bin
Bin Cleaning (over once per year)	\$45.00 per cleaning
Bin Overage Cleanup (following one written warning)	\$30.00
HHW Event (per Appendix D of Agreement)	\$35,000/event
Commercial HHW Collection	\$25.00 per item
Emergency Service Rates - one crew and one collection truck	\$85.00/hour

* Excludes HHW, Administrative and AB 939 fees. Includes Contracting Fee, Recycle Ranger Funding, Recyclables Rebate, Solid Waste Vehicle Road Impact Reimbursement, Audit costs and all other costs included under this Agreement (see Sections 12.4.1 and 7.2.6).

I.8 Cost Component Weightings

Since the City Council approved Appendix I on January 4, 2011, the cost component weightings in Appendix Section B.4.2 shall be replaced with the following:

Cost Component Weightings for Rate Adjustments - July 1, 2012 rate adjustment

<u>Cost Category</u>	<u>Initial Weightings</u>	
	<u>Cart/Bin</u>	<u>Roll-Off</u>
Labor	25.6%	59.6%
Fuel	8.8%	26.9%
Equipment	10.6%	0%
Waste-To-Energy	10.7%	N/A
Disposal/Green Waste and Organics Processing	40.5%	N/A
All Other	<u>3.8%</u>	<u>13.5%</u>
Total	100%	100%

Appendix J
Notary Certification

STATE OF CALIFORNIA)

COUNTY OF _____) ss:

On _____, _____, before me, the undersigned, a Notary Public in and for the State of California, personally appeared _____, known to me to be the _____ of Contractor that executed the within instrument on behalf of the Contractor therein named, and acknowledged to me that such Contractor executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of _____ this _____ day of _____, _____.

Notary Public

My Commission Expires:

Appendix K
Contractor Proposal